

# code of federal regulations

GS 4.108:45 /pt.500-1199/981

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**Public Welfare**

COMPLETED

**45**

**PARTS 500 TO 1199**

**Revised as of October 1, 1981**

022-003-94676-4





# code of federal regulations

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**Public Welfare**

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**45**

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**PARTS 500 TO 1199**

**Revised as of October 1, 1981**

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***Cite this Code CFR***

***thus: 45 CFR 500.1***

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# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

## ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

|                                |                 |
|--------------------------------|-----------------|
| Title 1 through Title 16.....  | as of January 1 |
| Title 17 through Title 27..... | as of April 1   |
| Title 28 through Title 41..... | as of July 1    |
| Title 42 through Title 50..... | as of October 1 |

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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## EFFECTIVE DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised semiannually as of January 1 and July 1, entitled **CFR INDEX AND FINDING AIDS**. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

**JOHN E. BYRNE,**

*Director,*

*Office of the Federal Register.*

*October 1, 1981.*



## THIS TITLE

Title 45—PUBLIC WELFARE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1-199, 200-499, 500-1199, and 1200 to end. These volumes represent all current regulations codified under this title of the CFR as of October 1, 1981.

Those amendments to Part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

For this volume Roger Pacella was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.



# New Publication

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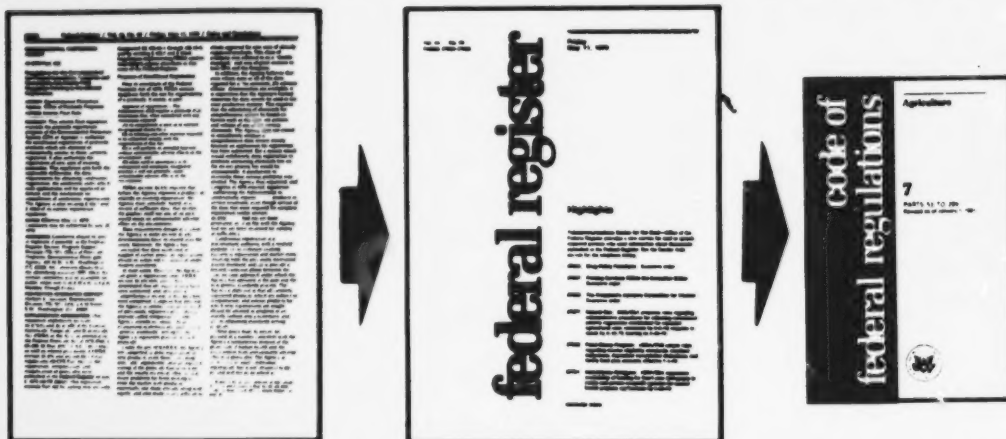
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# Title 45—Public Welfare

(This book contains Parts 500 to 1199)

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CROSS REFERENCE: Community Services Administration Procurement Regulation, 41 CFR Chapter 22.

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500.7 Restrictions on former employees.

**AUTHORITY:** Sec. 2, 62 Stat. 1240, as amended, sec. 3, 64 Stat. 13, as amended; 50 U.S.C. App. 2001, 22 U.S.C. 1622.

**SOURCE:** 28 FR 13495, Dec. 13, 1963, unless otherwise noted.

**§ 500.1 Appearance and practice.**

(a) An individual may appear in his own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; an officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(b) A person may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia. With respect to Philippine war damage claims under the provisions of Pub. L. 87-616 (76 Stat. 411), a person may also be represented by an attorney at law in good standing with the Philippine Bar Association or the Philippine Supreme Court. However, such attorney may be required to furnish a certificate to this effect.

(c) In cases falling within the purview of Subchapter B of this chapter, persons designated by veterans' service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants shall be deemed duly authorized to practice before the Commission

when the designating organization shall have been issued a letter of accreditation by the Commission. Petitions for accreditation shall be in writing, executed by duly authorized officer or officers, addressed to the Foreign Claims Settlement Commission of the United States, Washington, D.C. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up membership, statements that the organization will not charge any fee for services rendered by its designees in behalf of claimants and that it will not refuse on the grounds of non-membership to represent any claimant who applies for such representation if he has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

(d) A person may not be represented before the Commission except as authorized in paragraph (a), (b) or (c) of this section.

**§ 500.2 Notice of entry or withdrawal of counsel in claims.**

(a) Counsel entering an appearance in a claim originally filed by claimant in his own behalf or requesting a substitution of attorneys, and counsel filing a claim on behalf of a claimant under Pub. L. 87-616, shall be required to file an authorization by claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, it must appear that he has duly notified his client (claimant).

(c) When a claimant advises the Commission that counsel no longer represents him, a copy of the Commission's acknowledgment shall be forwarded to such counsel.

**§ 500.3 Fees.**

(a) No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in con-

nection with any claim falling within the purview of Subchapter B and Subchapter F of this chapter shall exceed ten per centum of the amount allowed on account of such claim, except that the Commission in its discretion may fix a lesser per centum with respect to any claim filed thereunder.

(b) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Title III of the Act<sup>1</sup> shall not exceed ten per centum of the total amount paid on account of such claim, except that the Commission may upon petition, as prescribed in § 500.4, in its discretion enter an order authorizing such remuneration in an amount which exceeds the maximum otherwise permitted.

(c) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within Title I, Title IV, Title VI, or Title VII of the International Claims Settlement Act shall not exceed ten per centum of the total amount paid on account of such claim.

(d) No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commission under Title V of the International Claims Settlement Act of 1949, as amended (claims against the Government of Cuba and the Chinese Communist regime), shall exceed 10 per centum of so much of the total amount of such claim, as determined by the Commission under Title V of the Act, as does not exceed \$20,000, plus 5 per centum of so much of such amount, if any, as exceeds \$20,000.

(e) The total remuneration on account of services rendered or to be rendered to or on behalf of any applicant in connection with any application filed under Pub. L. 87-616 (76 Stat. 411) shall not exceed five per centum of the amount paid by the Commission on account of such application.

(Pub. L. 96-606)

[28 FR 13495, Dec. 13, 1963, as amended at 30 FR 13869, Nov. 2, 1965; 33 FR 232, Jan. 6, 1968; 46 FR 26062, May 11, 1981]

**§ 500.4 Petitions for additional remuneration pursuant to section 317(b) of Title III of the Act.<sup>1</sup>**

A petition under section 317(b) of the Act for an order authorizing the payment of remuneration in excess of the maximum prescribed by section 317(a) of the Act shall be in writing and verified by the petitioner. It shall include (a) a fully itemized statement of all services at any time rendered by the petitioner on behalf of the claimant in connection with the claim with respect to which the petition is filed, whether rendered before or after the filing of the claim with the Commission, (b) a statement of all remuneration theretofore received by the petitioner on account of such services, and (c) an itemized statement to the best of petitioner's knowledge, information and belief, of all services theretofore at any time rendered by any other person or persons on behalf of the claimant in connection with such claim and of all remuneration paid on account of such other services; shall state in detail such special circumstances of unusual hardships as, in the opinion of the petitioner, justify payment in excess of the maximum remuneration otherwise permitted by section 317(a); shall be accompanied, as exhibits, by all documents including agreements relating to remuneration, available to petitioner evidencing the allegations of his petition; and shall state the total amount of remuneration which it is believed should be authorized.

**§ 500.5 Order allowing fees in excess of ten per centum of amount paid on account of claims under Title III of the International Claims Settlement Act of 1949, as amended.**

The Commission may, upon the petition described in § 500.4 and supporting affidavit, after consultation with the claimant and consideration of the evidence, in its sole discretion, upon a finding that there exist special circumstances of unusual hardship which require the payment of a fee in excess of the maximum amount otherwise al-

<sup>1</sup>Refers to the International Claims Settlement Act of 1949, as amended.

lowable, issue an order authorizing such excess, the said order to specify the amount of such excess.

[28 FR 13495, Dec. 13, 1963, as amended at 30 FR 13869, Nov. 2, 1965]

#### § 500.6 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter—

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or sections 4(f), 317(a), 414, and 512 of the International Claims Settlement Act of 1949, as amended, or § 500.3 of Part 500 of the regulations.

(b) Contemptuous or contumacious conduct at any hearing shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

[28 FR 13495, Dec. 15, 1963, as amended at 30 FR 13870, Nov. 2, 1965]

#### § 500.7 Restrictions on former employees.

(a) No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall act in any way as agent or attorney for anyone other than the United States in connection with any matter before the Commission if he participated in the matter personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

(b) No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall, for a period of one year following such service, appear personally before the Commission as agent or attorney for

anyone other than the United States with respect to a matter which was within the boundaries of his official responsibility during the last year of his service as an officer or employee of the Government.

### PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

#### Sec.

501.1 Extent of authority.

501.2 Subpoenas.

501.3 Service of process.

501.4 Witnesses.

501.5 Depositions.

501.6 Documentary evidence.

501.7 Time.

**AUTHORITY:** Sec. 2, 62 Stat. 1240, as amended, sec. 3, 64 Stat. 13, as amended; 50 U.S.C. App. 2001, 22 U.S.C. 1622.

**SOURCE:** 28 FR 13496, Dec. 13, 1963, unless otherwise noted.

#### § 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) *Certification.* The Commission or any member thereof may, for the purpose of any such hearing, examination or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

#### § 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on his own volition or upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for the issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the



party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover the fees and mileage involved.

(c) *Motion to quash.* If any person subpoenaed does not intend to comply with the subpoena, he shall, within 15 days after the date of service of the subpoena upon him, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) *Appeal from interlocutory order.* An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) *Order of court upon failure to comply.* Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Pub. L. 696, 81st Congress, approved August 16, 1950, 50 U.S.C. App. 2001(d), may issue an order requiring such person to appear at the designated place of hearing, examination or investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

§ 501.3 Service of process.

(a) *By whom served.* The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) *Kinds of service.* Subpoenas, orders, rulings, and other processes of the Commission, may be served by delivering in person, by first class or registered mail, or by telegraph or by publications.

(c) *Personal service.* Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer, or a director of the corporation to be served or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) *Service by first class mail.* Service by first class mail shall be regarded as complete, upon deposit in the United States mail properly stamped and addressed.

(e) *Service by registered mail.* Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers, is received by the Commission.

(f) *Service by telegraph.* Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) *Service by publication.* Service by publication is complete when due notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) *Date of service.* The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) *Filing with Commission.* Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

#### § 501.4 Witnesses.

(a) *Examination of witnesses.* Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) *Witness fees and mileage.* Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) *Transcript of testimony.* Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy of transcript of his testimony or the documents produced.

#### § 501.5 Depositions.

(a) *Application to take.* (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the

proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination only where it is shown for good cause that such testimony is essential and that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) *Who may take.* Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legation, consul-general, consul, vice consul, or consular agent of the United States.

(c) *Examination and certification of testimony.* At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and his testimony shall be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness and that

said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with his certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, D.C., or to the field office designated.

(d) *Admissibility in evidence.* The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) *Errors and irregularities.* All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) *Scope of use.* The deposition of a witness, if relevant, may be used if the Commission finds: (1) That the witness has died since the deposition was taken; or (2) that the witness is beyond a distance greater than 100 miles radius of Washington, D.C., the designated field office or the designated place of the hearing; or (3) that the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, and his representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this part and the officer taking the

deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

#### § 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

#### § 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discre-



tion (1) with or without motion or notice, previous order or (2) upon motion permit the act to be done after the expiration of the specified period.

## **PART 502—EMPLOYEE RESPONSIBILITIES AND CONDUCT**

### **Sec.**

502.735-1 Adoption of regulations.

502.735-2 Review of statements of employment and financial interests.

502.735-3 Disciplinary and other remedial action.

502.735-4 Gifts, entertainment, and favors.

502.735-5 Outside employment and other activity.

502.735-6 Specific provisions of agency regulations governing special Government employees.

502.735-7 Statements of employment and financial interest.

502.735-8 Supplementary statements.

**AUTHORITY:** E.O. 11222 of May 8, 1965, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

**SOURCE:** 32 FR 13508, Sept. 27, 1967, unless otherwise noted.

### **§ 502.735-1 Adoption of regulations.**

Pursuant to 5 CFR 735.104(f), the Foreign Claims Settlement Commission of the United States (referred to hereinafter as the Commission) hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: §§ 735.101-102, 735.201a, 735.202 (a), (d), (e), (f)-735.210, 735.302, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404, 735.405, 735.407-735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

### **§ 502.735-2 Review of statements of employment and financial interests.**

Each statement of employment and financial interests submitted under this part shall be reviewed by the General Counsel. When this review indicates a conflict between the interests of an employee or special Government employee of the Commission and the performance of his services for the Government, the General Counsel shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and at-

tempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the General Counsel shall forward a written report on the indicated conflict to the Chairman of the Commission through the counselor for the agency designated under 5 CFR 735.105(a).

### **§ 502.735-3 Disciplinary and other remedial action.**

An employee or special Government employee of the Commission who violates any of the regulations in this part or adopted under § 502.735-1 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

- (a) Changes in assigned duties;
- (b) Divestment by the employee or special Government employee of his conflicting interest; or
- (c) Disqualification for a particular assignment.

### **§ 502.735-4 Gifts, entertainment, and favors.**

The Commission authorizes the exceptions to 5 CFR 735.202(a) set forth in 5 CFR 735.202(b) (1)-(4).

### **§ 502.735-5 Outside employment and other activity.**

An employee of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment: *Provided, however,* That no professional officer or employee of the Commission shall engage in the private practice of his profession, and no officer or employee, regardless of the nature of his duties with the Commission, shall engage in the private practice of law, except upon the prior approval in writing by the Chairman of the Commission.

### **§ 502.735-6 Specific provisions of agency regulations governing special Government employees.**

- (a) Special Government employees of the Commission shall adhere to the

standards of conduct applicable to employees as set forth in this part and adopted under § 502.735-1, except 5 CFR 735.203(b).

(b) Special Government employees of the Commission may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 502.735-4.

**§ 502.735-7 Statements of employment and financial interest.**

(a) In addition to the employees required to submit statements of employment and financial interest under 5 CFR 735.403(a), employees in the following named positions shall submit statements of employment and financial interest:

- (1) Executive Director.
- (2) Attorneys in Charge of Divisions.

(b) Each statement of employment and financial interest required by this section shall be submitted to the General Counsel of the Commission.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the Commission's grievance procedure.

**§ 502.735-8 Supplementary statements.**

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or the regulations in this part or adopted under § 502.735-1.

**PART 503—PUBLIC INFORMATION**

Sec.

503.1 Organization and authority—Foreign Claims Settlement Commission.

503.2 Material to be published in the FEDERAL REGISTER pursuant to Pub. L. 89-487.

Sec.

503.3 Effect of nonpublication.

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503.7 Additional documents and records generally available for inspection and copying.

503.8 Effect of noncompliance.

503.9 Availability of records.

503.10 Actions on requests.

503.11 Appeal.

503.12 Exemptions.

503.14 Fees for services.

**AUTHORITY:** Sec. 3, 81 Stat. 54 (7 U.S.C. 2243). Sec. 3 Administrative Procedure Act 60 Stat. 237, as revised by Pub. L. 89-487, 80 Stat. 250 as amended by Pub. L. 93-502, 88 Stat. 1561 (5 U.S.C. 552).

**SOURCE:** 40 FR 10178, Mar. 5, 1975, unless otherwise noted.

**§ 503.1 Organization and authority—Foreign Claims Settlement Commission.**

(a) The Foreign Claims Settlement Commission of the United States is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279), effective July 1, 1954. Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12 (22 U.S.C. 1621-1642)) and the War Claims Act of 1948 (62 Stat. 1240; (50 U.S.C. 2001-2016)).

(b) The Commission has jurisdiction to determine claims of U.S. nationals against foreign governments for compensation for losses and injuries sustained by such nationals, pursuant to programs which may be authorized under either of said Acts. Available funds have their sources in international settlements or liquidation of foreign assets in this country by the Department of Justice or Treasury, and from public funds when provided by the Congress.

(c) The three members of the Commission are appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided by the Act of October 22, 1962 (76 Stat. 1107 (50 U.S.C. 2001)). The President designates the Chairman.

(d) All functions of the Commission are vested in the Chairman with respect to the internal management of

the affairs of the Commission, including but not limited to: (1) The appointment of personnel employed under the Commission; (2) the direction of employees of the Commission and the supervision of their official duties; (3) the distribution of business among employees and organizational units under the Commission; (4) the preparation of budget estimates; and (5) the use and expenditures of funds of the Commission available for expenses of administration.

(e) The Chairman also has the control and direction of the Micronesian Claims Commission, established under the Micronesian Claims Act of 1971 (85 Stat. 92), for the purpose of settling certain war and post-secure claims of Micronesian inhabitants of the Trust Territory of the Pacific Islands.

(f) Request for records shall be made in writing by mail or presented in person, to the Executive Director, Foreign Claims Settlement Commission.

(g) The offices of the Commission are located at 1111 20th Street NW (Vanguard Building), Washington, D.C. An information center for the convenience of the public is located on the fourth floor.

**§ 503.2 Material to be published in the Federal Register pursuant to Pub. L. 89-487.**

The Commission shall separately state and concurrently publish the following materials in the **FEDERAL REGISTER** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

**§ 503.3 Effect of nonpublication.**

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the **FEDERAL REGISTER** and not so published.

**§ 503.4 Incorporation by reference.**

For purposes of this part, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the **FEDERAL REGISTER** when incorporated by reference therein with the approval of the Director of the Federal Register.

**§ 503.5 Records generally available.**

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the **FEDERAL REGISTER**; and

(c) A current index, which shall be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1957. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

**§ 503.6 Current index.**

The Commission shall maintain and make available for public inspection and copying, current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, as required to be indexed by 5 U.S.C. 552(a)(2).



**§ 503.7 Additional documents and records generally available for inspection and copying.**

The following kinds of documents are also available for inspection and copying at the public information center of the Commission:

- (a) Rules of practice and procedure.
- (b) Annual report of the Commission to the Congress of the United States.
- (c) Bound volumes of Commission decisions.
- (d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.
- (e) Claims Agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.
- (f) Press releases and other miscellaneous material concerning Commission operations.
- (g) Indexes of claims filed under the various claims programs administered by the Commission.

**§ 503.8 Effect of noncompliance.**

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited, as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

**§ 503.9 Availability of records.**

- (a) Each person desiring access to a record covered by this part must comply with the following provisions:
  - (1) A written request must be made for the record.
  - (2) Such request must indicate that it is being made under the Freedom of Information Act.
  - (3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".
  - (4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.
  - (5) The foregoing requirements must be complied with whether the request

is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of the section are not met, the ten day time limit described in § 503.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this Part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Executive Director, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this Part in connection with Commission records is delegated to the Executive Director or Commission employee acting in his stead.

**§ 503.10 Actions or requests.**

(a) The Executive Director or any employee acting in his stead shall determine within ten days (excepting Saturdays, Sundays and legal public holidays) after the receipt of any such request whether to comply with such request. Upon receipt of a request for a Commission record which is available, the Executive Director or any employee acting in his stead shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees

under § 503.14. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by the Executive Director or Commission employee acting in his stead, including a statement for the reason of denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time limits prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of

such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the Commission shall notify the person making such request of the provisions for judicial review of that determination under section 552(a)(4) of title 5, U.S.C.

(e) The General Counsel is designated to make determinations on appeals.

#### § 503.11 Appeal.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (d) of § 503.10, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10, that a record he has requested will not be disclosed, may apply to the General Counsel of the Commission, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the Executive Director (or his designee), or the General Counsel, as the case may be, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, the twenty day time limit described in § 503.10 will not begin to run until the application has been identified by an employee of the Commission as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever the Executive Director or the General Counsel, as the case may be, determines it to be necessary, he may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The



decision of the Executive Director or the General Counsel, as the case may be, as to the availability of the record is administratively final.

(d) The decision by the Executive Director, or the General Counsel, as the case may be, not to disclose a record under this part is considered to be a withholding for the purposes of section 552(a)(3) of Title 5, U.S.C.

(e) Any final decision by the Executive Director or his delegee not to disclose a record under this part is subject to concurrence by the General Counsel.

§ 503.12 Exemptions.

In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such executive order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or fi-

nancial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission, the Executive Director, and the General Counsel, regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory files compiled for law enforcement purposes but only to the extent that the production of such records would (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedure; or (6) endanger the life or physical safety of law enforcement personnel.

§ 503.14 Fees for services.

Unless otherwise waived by paragraphs (d) and (e) of this section, the following fees shall be imposed for the reproduction of any record disclosed pursuant to this part.

(a) Copying of records and documents. Twelve cents per copy for each page.

(b) Search fees. (1) Clerical searches. \$1.25 for each quarter hour spent by clerical personnel searching for and producing a requested record or document, including time spent copying any record. (2) \$3 for each one quarter hour spent by professional or supervisory personnel searching for and producing a requested record, including time spent copying any record.

(c) Certification and validation of records. \$1 per certification or authentication.

(d) The Executive Director may reduce or waive payment of fees in whole or in part when he determines that such reduction or waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public, or unless the requester is a government agency or indigent.

(e) No fees will be charged (1) for time spent in examining the requested records for the purpose of determining whether an exemption can and should be asserted, (2) for time spent in deleting exempt matters being withheld from records to furnish, (3) for time spent in monitoring a requester's inspection of agency records made available to him in this manner, or (4) for records not found or determined to be totally exempt from disclosure.

(f) Payment of fees under this part should be made by check or money order payable to the Treasury of the United States.

(g) Unless the request for services where fees are chargeable under this part, specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of \$50 will not be deemed to have been received until the requester is advised promptly at the time of receipt of the request of the anticipated cost and agrees to bear it. When the anticipated fees exceed \$50, a deposit of \$25 must be made within 5 days of advising the requester of such costs.

(h) Transcripts of testimony and of oral argument taken by a private firm may be purchased directly from the reporting firm.

## PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

### Subpart A—Privacy Act Regulations

- Sec.  
 504.1 General policies—Privacy Act.  
 504.2 Definitions—Privacy Act.  
 504.3 Conditions of disclosure.  
 504.4 Accounting of certain disclosures.  
 504.5 Access to records or information.  
 504.6 Determination of requests for access to records.  
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### Subpart B—Government in the Sunshine Regulations

- 504.20 Definitions.  
 504.21 Notice of public observation.  
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 504.29 Requests for information.

### Subpart A—Privacy Act Regulations

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 41 FR 19641, May 13, 1976, unless otherwise noted. Designated Subpart A at 42 FR 11010, Feb. 25, 1977.

#### § 504.1 General policies—Privacy Act.

The Foreign Claims Settlement Commission will protect the privacy of an individual identified in any information or record systems which it maintains. Accordingly, its officials and employees, except as otherwise provided by law or regulation, will:

(a) Permit an individual to determine what records pertaining to such individual are collected, maintained, used or disseminated by the Foreign Claims Settlement Commission.

(b) Permit an individual to prevent records pertaining to such individual obtained by the Foreign Claims Settlement Commission for a particular pur-

pose from being used or made available for another purpose from being used or made available for another purpose without the individual's consent.

(c) Permit an individual to gain access to information pertaining to such individual in Foreign Claims Settlement Commission records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(d) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(e) Permit exemptions from record requirements provided under the Privacy Act only where an important public policy used for such exemption has been determined in accordance with specific statutory authority.

[41 FR 19641, May 13, 1976, as amended at 42 FR 11010, Feb. 25, 1977]

#### § 504.2 Definitions—Privacy Act.

For the purpose of this part:

(a) The term "agency" includes any executive department, military department, government corporation, government controlled corporation, or other establishments in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency. The Foreign Claims Settlement Commission (FCSC) is an "agency" within the meaning of the term.

(b) The Micronesian Claims Commission, created under the provisions of the Micronesian Claims Act of 1971, Pub. L. 92-39, 85 Stat. 92, under the control and direction of the Chairman of the Foreign Claims Settlement Commission, is deemed a component part of the FCSC, an "agency" defined under paragraph (a) of this section for the purposes of the Privacy Act.

(c) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) The term "maintain" includes maintain, collect, use, or disseminate.

(e) The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, an individual's education, financial transactions, medical history, and criminal or employment history, and that contains an individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(f) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of Title 13, United States Code.

(g) The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(h) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

[41 FR 19641, May 13, 1976, as amended at 42 FR 11010, Feb. 25, 1977]

#### § 504.3 Conditions of disclosure.

The Commission will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(a) To those officers and employees of the Commission which maintains the record and who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use;

(d) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;



(e) To a recipient who has provided the Commission with adequate advance assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any government jurisdiction within or under control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Commission, specifying the particular record and the law enforcement activity for which it is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction.

#### § 504.4 Accounting of certain disclosures.

(a) Except for disclosures under § 504.3 (a) and (b) of this part, the Executive Director shall keep an accurate accounting of each disclosure or a record to any person or to another agency made under § 504.3 (c), (d), (e), (f), (g), (h), (i), (j), and (k) of this part.

(b) Except for a disclosure made to another agency or to an instrumentality of any governmental jurisdiction under § 504.3(g) of this part, the Ex-

ecutive Director shall make the accounting as required under paragraph (a) of this section available to any individual upon written request made in accordance with § 504.5.

(c) The Executive Director shall inform any person or other agency about any correction or notation of dispute in accordance with § 504.7(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) An accounting of disclosures of records within this section shall consist of the date, nature, the purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(e) Such accounting shall be retained for 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

#### § 504.5 Access to records or information.

(a) Upon request in person or by mail, any individual shall be informed whether or not a system of records maintained by the Commission contains a record or information pertaining to such individual.

(b) Any individual requesting access to such record or information in person shall present himself at the Office of the Executive Director, Foreign Claims Settlement Commission, Vanguard Building, 4th Floor, 1111 20th Street, NW, Washington, DC, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, and

(1) Provide information sufficient in the opinion of the Executive Director to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.;

(2) Provide identification acceptable to the Executive Director to verify the individual's identity, e.g., driver's license, identification or medicare card;

(3) Any individual requesting access to records or information pertaining to such individual may be accompanied by a person of the individual's own choosing while reviewing the record thereof. If an individual elects to be so accompanied, he shall notify the Ex-

Executive Director of such election in his request, and shall provide a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted.

(c) Any individual making a request for access to records or information pertaining to such individual by mail, shall address such request to the Executive Director (Privacy Officer) Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, and shall provide information acceptable to the Executive Director to verify the individual's identity, e.g., claim and decision number, description of property loss, etc.

(d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within such period, an acknowledgement will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

**§ 504.6 Determination of requests for access to records.**

(a) Upon request made in accordance with § 504.5, the Executive Director shall:

(1) Determine whether or not such request will be granted;

(2) Make such determination and provide notification within a reasonable period of time after receipt of such request.

(b) If access to a record is denied because information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, the Executive Director shall notify the individual of such determination and that such individual shall be apprised of the reason(s) for denial, and his right to judicial appeal under 5 U.S.C. 552a(g).

(c) If access to the record is granted, the individual making such request shall notify the Executive Director whether the records requested are to be copied and mailed to the individual.

(d) If records are to be made available for personal inspection, the individual shall arrange with the Execu-

tive Director a mutually agreeable time and place for inspection of the record.

**§ 504.7 Amendment of a record.**

(a) Any individual may request amendment of a record pertaining to him according to the procedure in paragraph (b) of this section except those records described under paragraph (e) of this section.

(b) After inspection by an individual of a record pertaining to such individual, such individual may file a written request, presented in person or by mail, with the Executive Director for an amendment to a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) Not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Executive Director shall:

(1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete and thereafter inform the individual of such correction; or

(2) Inform the individual, by certified mail return receipt requested, of the refusal to amend such record setting forth the reasons therefor, and notify the individual of his right to appeal that determination to the Chairman of the Commission under § 504.8 of this part.

(d) The Executive Director shall inform any person or other agency to whom a record or notation of dispute made by the Executive Director with respect to such records in accordance with § 504.4 of this part, referring to amendment of a record, if an accounting of such disclosure has been made.

(e) The provisions for amending records do not permit the alteration of evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the



Commission pursuant to statutory time limitations.

**§ 504.8 Appeals from denial of request for amendment to records.**

(a) An individual whose request to amendment of a record pertaining to him is denied, may further request a review of such determination in accordance with paragraph (b) of this section.

(b) Not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, the Chairman of the Commission or an officer designated by the Chairman to act in his absence shall complete such review and make a final determination unless, for good cause shown, the Chairman of the Commission or an officer designated by the Chairman to act in his absence extends such 30-day period.

(c) Such request shall be addressed to the Chairman, Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, D.C. 20579, and shall specify the reasons for which the refusal to amend is challenged.

(d) Upon appeal from a denial to amend a record, the Chairman of the Commission or the officer designated by the Chairman to act in his absence, shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail return receipt requested not later than 30 days (excluding Saturdays, Sundays, and legal holidays) after receipt of such appeal, unless extended pursuant to paragraph (g) of this section.

(e) The Chairman or the officer designated by the Chairman to act in his absence shall also notify the individual of the provisions of 5 U.S.C. 552a(g)(1)(A) regarding judicial review of the Chairman's or the officer's determination.

(f) If on appeal the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for his disagreement with the Chairman's or the officer's determination.

(g) The Chairman or the officer acting in his absence may extend up to 30 days the time prescribed in para-

graph (d) of this section within which to make a determination on an appeal from refusal to amend a record for the reason that a fair and equitable review cannot be completed within the prescribed period.

**§ 504.9 Fees.**

(a) Fees to be charged, if any, to any individual for making copies of such individual's record, excluding the cost of any search for and review of the record will be as follows:

(1) Photocopy reproductions, each copy \$0.05.

(2) Where the Commission undertakes to perform for a requestor for any other person services which are very clearly not required to be performed under the Privacy Act, either voluntarily or because such services are required by some other law, the question of charging fees for such services will be determined by the official or designee authorized to release the information, under the Federal user charge statute 31 U.S.C. 483a, any other applicable law, and the provisions of § 503.14 of Part 503 of the Commission's regulations.

**§ 504.10 Exemptions.**

No system of records maintained by the Foreign Claims Settlement Commission are exempt from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k). However the Chairman of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b) (1), (2) and (3), (c) and (e) to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

**§ 504.11 Reports.**

(a) The Executive Director or designee will provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Commission system or systems of records, as required by 5 U.S.C. 552a(o).

(b) If at any time a system or systems of records maintained by the Commission is determined to be

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exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the number of records contained in such system or systems will be separately listed and reported to the Office of Management and Budget.

### § 504.12 Notices.

(a) The Commission shall publish in the **FEDERAL REGISTER** at least annually a notice of the existence and character of the system or systems of records which it maintains. Such notice shall include:

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system including the categories of users and the purpose of each use;

(5) The policies and practices of the Commission regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the agency official who is responsible for the system of records;

(7) Commission procedures whereby an individual can be notified if the system of records contains a record pertaining to him.

(8) Commission procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the systems of records, and how he can contest its contents, and

(9) The categories of sources of records in the system.

### Subpart B—Government in the Sunshine Regulations

**AUTHORITY:** 5 U.S.C. 552b.

**SOURCE:** 42 FR 11010, Feb. 25, 1977, unless otherwise noted.

### § 504.20 Definitions.

For purposes of this part:

(a) The term "agency" means any agency, as defined in 5 U.S.C. 552b(e), which includes the Foreign Claims

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Settlement Commission, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(b) The term "Commission" means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate;

(c) The term "member" means any one of the three members of the Commission;

(d) The term "meeting" means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business;

(e) The terms "closed meeting" and "closed portion of a meeting" mean, respectively, a meeting or that part of a meeting designated as provided in § 504.26 as closed to the public by reason of one or more of the closure provisions listed in § 504.24;

(f) The term "open" meeting means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting; and

(g) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Foreign Claims Settlement Commission.

### § 504.21 Notice of public observation.

(a) A member of the public is not required to give advance notice to the Commission of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to

the Commission at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 504.29.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention to the Commission.

#### § 504.22 Scope of application.

The provisions of this Part 504, §§ 504.20 through 504.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Foreign Claims Settlement Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

#### § 504.23 Open meetings.

Every meeting of the Commission shall be open to public observation except as provided in § 504.24.

#### § 504.24 Grounds for closing a meeting.

(a) Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute (i) requires that the matters be withheld from the public in

such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Foreign Claims Settlement Commission;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Foreign Claims Settlement Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a



civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in section 554, of Title V or otherwise involving a determination on the record after opportunity for a hearing.

(b) If the Commission determines that the public interest would require that a meeting be open, it may nevertheless so hold.

**§ 504.25 Announcement of meetings.**

(a) The Commission meets beginning at 10:30 a.m. in the offices of the Foreign Claims Settlement Commission, 1111 20th Street, NW, Washington, DC, on each Wednesday, unless notice to the contrary is given.

(b) At any duly called meeting held previous to any meeting scheduled as provided in paragraph (a) of this section, the Commission may fix a different time and place for a subsequent meeting.

(c) For any meeting of the Commission which is fixed as provided in (b) of this section, the Foreign Claims Settlement Commission shall, at the earliest practicable time, make information available for public inspection in its offices, or pursuant to telephonic or written requests, concerning the time and place fixed for such subsequent meeting.

(d) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission the Foreign Claims Settlement Commission shall make available for public inspection in its offices, or pursuant to telephonic or written requests, the subject matter of the meeting except to the extent that such information is exempt from disclosure under the provisions of § 504.24.

**§ 504.26 Procedures for closing of meetings.**

(a) The closing of a meeting shall occur when:

(1) A majority of the membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with re-

spect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 504.24, or with respect to any information which is proposed to be withheld under § 504.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 504.24 (e), (f) or (g), the Commission upon request of any one of its Commission members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, before such meeting is closed, the General Counsel of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall state each relevant closure provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission.



**§ 504.27 Reconsideration of opening or closing, or rescheduling a meeting.**

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and the Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time.

**§ 504.28 Record of closed meetings or closed portion of a meeting.**

(a) The Foreign Claims Settlement Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 504.24 (d), (h), or (j), the Foreign Claims Settlement Commission shall maintain either such transcript, recording, or a detailed set of minutes.

(b) Any minutes so maintained shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any action shall be identified in the minutes.

(c) The Foreign Claims Settlement Commission shall promptly make

available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Foreign Claims Settlement Commission determines to contain information which may be withheld under § 504.24. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Foreign Claims Settlement Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Foreign Claims Settlement Commission shall be by or under the authority of the Chairman, Foreign Claims Settlement Commission.

**§ 504.29 Requests for information.**

Requests to the Foreign Claims Settlement Commission for information about the time, place, and subject matter of a meeting, whether it or any portion thereof is closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 504.24, shall be addressed to the Executive Director, Foreign Claims Settlement Commission, 1111 20th Street, NW, Washington, DC 20579, telephone 202/653-6156.

## SUBCHAPTER B—RECEIPT, ADMINISTRATION AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUBLIC LAW 91-289, APPROVED JUNE 24, 1970

### PART 505—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

505.1 Claim defined.

505.2 Time within which claims may be filed.

505.3 Official claim forms.

505.4 Place of filing claims.

505.5 Documents to accompany forms.

505.6 Receipt of claims.

**AUTHORITY:** Sec. 2, 62 Stat. 1240, as amended; 50 U.S.C. App. 2001.

**SOURCE:** 35 FR 14456, Sept. 15, 1970, unless otherwise noted.

#### § 505.1 Claim defined.

(a) A properly completed and executed application made on an official form provided by the Foreign Claims Settlement Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(b) Any communication, letter, note, or memorandum from a claimant, or his duly authorized representative, or a person acting as next of friend of a claimant who is not sui juris, setting forth sufficient facts to apprise the Commission of an interest to apply under the provisions of sections 5(i), 6(e) as amended, and 6(f) of the act, shall be deemed to be an informal claim. Where an informal claim is received and an official form is forwarded for completion and execution by the applicant, such official form shall be considered as evidence necessary to complete the initial claim, and unless such official form is received within thirty (30) days from the date it was transmitted for execution, if the claimant resides in the continental United States or forty-five (45) days if outside the continental United States, the claim may be disallowed.

#### § 505.2 Time within which claims may be filed.

(a) Claims of individuals entitled to benefits under section 5(i) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period, beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the civilian American citizens by whom the claim is filed returned to the jurisdiction of the United States; or (3) 3 years from the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States, whichever of the preceding dates last occurs.

(b) Claims of individuals entitled to benefits under section 6(e) of the War Claims Act of 1948, as amended by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending June 24, 1971, inclusive.

(c) Claims of individuals entitled to benefits under section 6(f) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or (3) 3 years from the date the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States, whichever of the preceding dates last occurs.

#### § 505.3 Official claim forms.

Official forms are provided for use in the preparation of claims for sub-

mission to the Commission for processing. Claims forms are available at the Washington offices of the Commission and through other offices as the Commission may designate. The official claim form for all claims under sections 5(i), 6(e) as amended, and 6(f) has been designated, FCSC Form 289, "Application for Compensation for Members of the Armed Forces of the United States Held as Prisoners of War in Vietnam; for Persons Assigned to Duty on Board the 'U.S.S. *Pueblo*' Captured by Military Forces of North Korea; for Civilian American Citizens Captured or Went into Hiding to Avoid Capture or Interment in Southeast Asia During the Vietnam Conflict and, in Case of Death of any Such Person, for Their Survivors."

#### § 505.4 Place of filing claims.

Claims must be mailed or delivered in person to the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. 20579.

#### § 505.5 Documents to accompany forms.

All claims filed pursuant to sections 5(a), 6(e) as amended, and 6(f) of the act must be accompanied by evidentiary documents, instruments, and records as outlined in the instruction sheet attached to the claim form.

#### § 505.6 Receipt of claims.

(a) *Claims deemed received.* A claim shall be deemed to have been received by the Commission on the date postmarked, if mailed, or if delivery is made in person, on the date of delivery at the office of the Commission in Washington, D.C.

(b) *Claims developed.* In the event that a claim has been so prepared as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official claim form, as may be essential to the processing thereof. In case the evidence or official claim form requested is not returned within the time which may be designated by the Commission, the claim may be deemed to have been abandoned and may be disallowed.

### PART 506—PROVISIONS OF GENERAL APPLICATION

Sec.

506.1 Persons eligible to file claims.

506.2 Persons under legal disability.

506.3 Definitions applicable under the Act.

**AUTHORITY:** Sec. 2, 62 Stat. 1240, as amended; 50 U.S.C. App. 2001.

**SOURCE:** 35 FR 14457, Sept. 15, 1970, unless otherwise noted.

#### § 506.1 Persons eligible to file claims.

Persons eligible to file claims with the Commission under the provisions of sections 5(i), 6(e) as amended by Pub. L. 91-289, and 6(f) of the War Claims Act of 1948, as amended, are:

(a) Civilian American citizens captured and held in Southeast Asia or their eligible survivors, under the provisions of section 5(i) of the act;

(b) Persons assigned to duty on board the U.S.S. *Pueblo* who were captured by the military forces of North Korea, or their eligible survivors, under section 6(e) of the act as amended by Pub. L. 91-289; and

(c) Members of the Armed Forces of the United States held as prisoners of war during the Vietnam conflict or their eligible survivors, under section 6(f) of the act.

#### § 506.2 Persons under legal disability.

(a) Claims may be submitted on behalf of persons who, being otherwise eligible to make claims under the provisions of sections 5(i), 6(e) as amended, and 6(f), are incompetent or otherwise under any legal disability, by the natural or legal guardian, committee, conservator, curator, or any other person, including the spouse of such claimant, whom the Commission determined is vested with the care of the claimant.

(b) Upon the death of any individual for which an award has been made, the Commission may consider the initial application filed by or in behalf of the decedent as a formal claim for the purpose of reissuing the award to the next eligible survivor in the order of



preference as set forth under sections 5(i)(4) and 6(d)(4) of the act.

**§ 506.3 Definitions applicable under the Act.**

(a) *Widow.* A "widow" is the surviving female spouse of a deceased prisoner of war or a deceased civilian American citizen who was married to the deceased at the time of his death by a marriage valid under the applicable law of the place where entered into.

(b) *Husband.* A "husband" is the surviving male spouse of a deceased prisoner of war or of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place entered into.

(c) *Child.* (1) A "child" is a natural or adopted son or daughter of a deceased prisoner of war or a deceased civilian American citizen, including any posthumous son or daughter of such deceased person.

(2) Any son or daughter of such deceased person born out of wedlock will be deemed to be a child of such deceased for the purpose of this act, if, (i) legitimated by a subsequent marriage of the parents, (ii) recognized as a child of the deceased by his or her admission, or (iii) so declared by an order or decree of any court of competent jurisdiction.

(d) *Parent.* (1)(i) A "parent" is the natural or adoptive father or mother of a deceased prisoner of war, or any person standing in loco parentis to such deceased person, for a period of not less than 1 year immediately preceding the date of his entry into active service and during at least 1 year of his minority. Not more than one mother and/or father as defined shall be recognized in any case. A person will not be recognized as standing in loco parentis if the natural parents or adoptive parents are living, unless there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the natural or adoptive parent or parents prior to entry into active service by the deceased prisoner of war; (ii) an award in the full amount allowable had the deceased prisoner of war survived may

be made to only one parent when it is shown that the other parent has died or if there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the other parent.

(2) The father of an illegitimate child will not be recognized as such for purpose of the act unless evidence establishes that (i) he has legitimated the child by subsequent marriage with the mother; (ii) recognized the child as his by written admission prior to enlistment of the deceased in the armed forces or entry into an overseas duty status; or (iii) prior to death of the child he has been declared by decree of a court of competent jurisdiction to be the father.

(e) *Natural guardian.* The father and mother shall be deemed to be the natural guardians of the person of their minor children. If either dies or is incapable of action, the natural guardianship of the person shall devolve upon the other. In the event of death or incapacity of both parents, then such blood relative, paternal or maternal, standing in loco parentis to the minor shall be deemed the natural guardian.

**PART 507—ELIGIBILITY REQUIREMENTS FOR COMPENSATION**

**Subpart A—Civilian American Citizen**

Sec.

507.1 "Civilian American citizen" defined.

507.2 Other definitions.

507.3 Rate of benefits payable.

507.4 Survivors entitled to award of detention benefits.

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**Subpart B—Prisoners of War**

507.10 Vietnam conflict.

507.11 "Prisoner of War" defined.

507.12 Membership in the Armed Forces, establishment of.

507.13 "Armed Forces of the United States" defined.

507.14 "Force hostile to the United States" defined.

507.15 Geneva Convention of August 12, 1949.

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## Sec.

- 507.17 Rate of and basis for award of compensation.  
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 507.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.

**Subpart C—Persons Captured While Assigned to Duty on Board the U.S.S. Pueblo**

- 507.25 Persons eligible for compensation as a prisoner of war.  
 507.26 Persons assigned to duty on board the U.S.S. Pueblo.  
 507.27 Geneva Convention of July 27, 1929.  
 507.28 Rate of and basis for award of compensation.  
 507.29 "Hostile force" defined.  
 507.30 Survivors entitled to award of compensation.  
 507.31 Persons precluded from receiving awards.

**AUTHORITY:** Sec. 2, 62 Stat. 1240, as amended; 50 U.S.C. App. 2001.

**SOURCE:** 35 FR 14458, Sept. 15, 1970, unless otherwise noted.

**Subpart A—Civilian American Citizen****§ 507.1 "Civilian American citizen" defined.**

The term "civilian American Citizen" means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force.

**§ 507.2 Other definitions.**

(a) *Citizen of the United States.* A "citizen of the United States" means a person who under applicable law acquired citizenship of the United States by birth, by naturalization, or by derivation.

(b) *Force hostile to the United States.* A "force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

(c) *Went into hiding.* The term "went into hiding" means the action taken by a civilian American citizen when he initiated a course of conduct consistent with an intention to evade capture or detention by a hostile force in Southeast Asia.

(d) *Southeast Asia.* The term "Southeast Asia" means but is not necessarily restricted to, the areas of North and South Vietnam, Laos, and Cambodia.

(e) *Calendar month.* The term "calendar month" means the period of time between a designated day of any given month and the date preceding a similarly designated day of the following month.

(f) *Dependent husband.* The term "dependent husband" means the surviving male spouse of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place where entered into.

**§ 507.3 Rate of benefits payable.**

Detention benefits awarded to a civilian American citizen will be paid at the rate of \$60 for each calendar month of internment or during the period such civilian American citizen went into hiding to avoid capture and internment by a hostile force. Awards shall take account of fractional parts of a calendar month.

**§ 507.4 Survivors entitled to award of detention benefits.**

In case of death of a civilian American citizen who would have been entitled to detention benefits under the War Claims Act of 1948, as amended, such benefits shall be awarded if claim is made only to the following persons: (a) Widow or husband if there is no child or children of the deceased; (b) widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares; (c) the child or children of the deceased in equal shares if there is no widow or dependent husband, if otherwise qualified.

## § 507.5

### § 507.5 Persons not eligible to award of civilian detention benefits.

Certain persons disqualified as a "civilian American citizen" under the Act and are thus precluded from receiving an award of detention benefits are as follows: (a) A person who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force, or (b) a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

## Subpart B—Prisoners of War

### § 507.10 Vietnam conflict.

The term "Vietnam conflict" relates to the period beginning February 28, 1961, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress.

### § 507.11 "Prisoner of war" defined.

The term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States who was held by any force hostile to the United States for any period of time during the Vietnam conflict.

### § 507.12 Membership in the Armed Forces of the United States, establishment of.

Regular appointment, enrollment, enlistment or induction in the Armed Forces of the United States shall be established by certification of the Department of Defense.

### § 507.13 "Armed Forces of the United States" defined.

The term "Armed Forces of the United States" means the United States Air Force, Army, Navy, Marine Corps and Coast Guard, commissioned officers of the U.S. Public Health Service who were detailed for active duty with the Armed Forces of the United States.

### § 507.14 "Force hostile to the United States" defined.

The term "force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed

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to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

### § 507.15 Geneva Convention of August 12, 1949.

The Geneva Convention of August 12, 1949, as contained under section 6(f) of the War Claims Act of 1948, as amended, is the "Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949" which is included under the "Geneva Conventions of August 12, 1949 For the Protection of War Victims", entered into by the United States and other governments, including the Government in North Vietnam which acceded to it on June 28, 1957.

### § 507.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.

For the purpose of this part obligations under the Geneva Convention of August 12, 1949, is the responsibility assumed by the contracting parties thereto with respect to prisoners of war within the meaning of the Convention, to comply with and to fully observe the provisions of the Convention, and particularly those articles relating to food rations of prisoners of war, humane treatment, protection, and labor of prisoners of war, and the failure to abide by the conditions and requirements established in such Convention by any hostile force with which the Armed Forces of the United States were engaged in armed conflict.

### § 507.17 Rate of and basis for award of compensation.

(a) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(2) of the War Claims Act of 1948, as amended, will be paid at the rate of \$2 per day for each day he was held as a prisoner of war on which the hostile force, or its agents, failed to furnish him the quantity and quality of food prescribed for prisoners of war under the Geneva Convention of August 12, 1949.

(b) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(3) of the Act, will be paid at the rate of \$3 per day for each day he was held as a prisoner of war on which the hostile force failed to meet the conditions and requirements under the provisions of the Geneva Convention of August 12, 1949 relating to labor of prisoners of war or for inhumane treatment by the hostile force by which he was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoners of war or a qualified applicant on a lump-sum basis at a total rate of \$5 per day for each day the prisoner of war was entitled to compensation.

**§ 507.18 Entitlement of survivors to award in case of death of prisoner of war.**

In case of death of a prisoner of war who would have been entitled to an award of compensation under section 6(f) (2) and (3) of the War Claims Act of 1948, as amended, such compensation shall be awarded to, and if claim is made, only to the following persons: (a) Widow or husband if there is no child or children of the deceased; (b) widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares; (c) child or children of the deceased (in equal shares) if there is no widow or husband; and (d) parents (in equal shares) if there is no widow, husband, or child.

**§ 507.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.**

Any member of the Armed Forces of the United States, who at any time, voluntarily, knowingly, and without duress gave aid to or collaborated with, or in any manner served any force hostile to the United States is precluded from receiving an award of compensation based on his capture and internment.

**Subpart C—Persons Captured While Assigned to Duty on Board the U.S.S. Pueblo**

**§ 507.25 Persons eligible for compensation as a prisoner of war.**

The term "prisoner of war" as it relates to claims under section 6(e) of the War Claims Act of 1948, as amended under Pub. L. 91-289 [84 Stat. 323], applies to any person (military or civilian) assigned to duty on board the U.S.S. Pueblo who was captured by the military forces of North Korea on January 23, 1968, and thereafter held prisoner by the Government of North Korea for any period of time ending on or before December 23, 1968. Such persons are entitled to receive compensation to the same extent as prisoners of war under the provisions of section 6(e) of the Act.

**§ 507.26 Persons assigned to duty on board the U.S.S. Pueblo.**

Persons assigned to duty on board the U.S.S. Pueblo at the time of its capture by the Government of North Korea shall be established by certification of the appropriate agency of the U.S. Government.

**§ 507.27 Geneva Convention of July 27, 1929.**

The Geneva Convention of July 27, 1929 is the "Convention of July 27, 1929, Relative to The Treatment of Prisoners of War" entered into between the United States and other powers at Geneva, Switzerland, on July 27, 1929, to the observance of which the United States, among other signatory powers, subsequently became bound.

**§ 507.28 Rate and basis for award of compensation.**

(a) Compensation allowed a prisoner of war under sections 6(e)(2) of the War Claims Act of 1938, as amended will be paid at the rate of \$1 per day for each day he was held as a prisoner of war on which the hostile force by which he was held as a prisoner of war, or its agents, failed to furnish him such quantity or quality of food in accordance with the standards prescribed for prisoners of war under the



terms of the Geneva Convention of July 27, 1929.

(b) Compensation allowed a prisoner of war under the terms of section 6 (e)(3) of the Act, will be paid at the rate of \$1.50 for each day the hostile force by which he was held as a prisoner of war, or its agents, failed to meet the conditions and requirements of the Geneva Convention of July 27, 1929, relating to labor of prisoners of war and for inhumane treatment by the hostile force by which he was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoner of war or a qualified applicant on a lump-sum basis at a total rate of \$2.50 per day for each day the prisoner of war was determined eligible to receive compensation.

§ 507.29 "Hostile force" defined.

The term "hostile force" as used under section 6(e) as amended, relating to claims of persons who were captured and held prisoners while assigned to duty on board the U.S.S. *Pueblo*, means the Government of North Korea, or its agents.

§ 507.30 Survivors entitled to award of compensation.

In case of death of any person who was captured and held as a prisoner while assigned to duty on board the U.S.S. *Pueblo* and who would have been entitled to an award of compensation under sections 6(e) (2) and (3) of the War Claims Act of 1948, as amended, such compensation shall be awarded to, and if claim is made only to, the following persons: (a) Widow or husband if there is no child or children of the deceased; (b) widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares; (c) child or children of the deceased (in equal shares) if there is no widow or husband; and (d) parents (in equal shares) if there is no widow, husband, or child.

§ 507.31 Persons precluded from receiving awards.

Any person under the provisions of section 6(e) of the act who, at any

time, voluntarily, knowingly, and without duress, gave aid to or collaborated with, or in any manner served any hostile force is precluded from receiving an award of compensation based on his capture and internment.

PART 508—PAYMENT

Sec.

508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91-289.

508.2 Payments to persons under legal disability.

508.3 Reissuance of awards.

AUTHORITY: Sec. 2, 62 Stat. 1240, as amended; 50 U.S.C. App. 2001.

SOURCE: 35 FR 14459, Sept. 15, 1970, unless otherwise noted.

§ 508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91-289.

(a) Upon a determination by the Commission as to amount and validity of each claim filed pursuant to sections 5(i), 6(e) as amended, and 6(f) of the War Claims Act of 1948, as amended, any award made thereunder will be certified by the Commission to the Secretary of the Treasury for payment out of funds appropriated for this purpose, in favor of the civilian internee or prisoner of war found entitled thereto.

(b) Awards made to survivors of deceased civilian internees or prisoners of war, will be certified to the Secretary of Treasury for payment to the individual member or members of the class or classes of survivors entitled to receive compensation in the full amount of the share to which each survivor is entitled, and if applicable, under the procedure set forth in § 508.3, except that as to persons under legal disability, payment will be made as specified in § 508.2.

§ 508.2 Payments to persons under legal disability.

Any award or any part of an award payable under section 5(i), 6(e) as amended, and 6(f) of the act to any person under legal disability may, in the discretion of the Commission, be certified for payment for the use of the claimant, to the natural or legal



guardian, committee, conservator or curator, or if there is no such natural or legal guardian, committee, conservator or curator then, in the discretion of the Commission, to any person, including the spouse of such person, or the Chief Officer of the hospital in which the claimant may be a patient, whom the Commission may determine is vested with the care of the claimant. In the case of a minor, any part of the amount payable may, in the discretion of the Commission, be certified for payment in such minor.

#### § 508.3 Reissuance of awards.

Upon the death of any claimant entitled to payment of an award, the Commission will cause the award to be cancelled and the amount of such award will be redistributed to the survivors of the same class or to members of the next class of eligible survivors, if appropriate, in the order of preference as set forth under the Act.

### PART 509—HEARINGS

#### Sec.

- 509.1 Basis for hearing.
- 509.2 Request for hearing.
- 509.3 Notification to claimant.
- 509.4 Failure to file request for hearing.
- 509.5 Purpose of hearing.
- 509.6 Resume of hearing, preparation of.
- 509.7 Action by Commission.
- 509.8 Application of other regulations.

AUTHORITY: Sec. 2, 62 Stat. 1240; 50 U.S.C. App. 2001.

SOURCE: 35 FR 14460, Sept. 15, 1970, unless otherwise noted.

#### § 509.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the full allowable amount of such claim, shall be entitled to a hearing before the Commission or its representative with respect to such claim. Hearings may also be held on the Commission's own motion.

#### § 509.2 Request for hearing.

Within 30 days after the Commission's notice of denial of a claim or approval for a lesser amount than claimed, has been posted by the Commission, the claimant, if a hearing is desired, shall notify the Commission

in writing, and shall set forth in such request his reasons in full for requesting the hearing, including any statement of law, or facts upon which the claimant relies.

#### § 509.3 Notification to claimant.

Upon receipt of such a request the Commission shall schedule a hearing and notify the claimant as to the date and place such hearing is to be held. No later than 10 days prior to the scheduled hearing date, claimant shall submit all documents, brief, or other additional evidence relative to an appeal from the award.

#### § 509.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 509.2 will be deemed to constitute a waiver of right to such hearing and the decision of the Commission shall constitute a full and final disposition of the case.

#### § 509.5 Purpose of hearing.

(a) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof, and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(b) Such hearings may be stenographically recorded either at the request of the claimant or at the discretion of the Commission. Claimants making such a request shall notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to him.

(c) Such hearings shall be open to the public.

## **§ 509.6**

### **§ 509.6 Résumé of hearing, preparation of.**

Upon such hearing, the hearing officer shall prepare a résumé of the hearing, specifying the issues on which the hearing was based, list of documents and contents, and other items relative to such questions introduced as evidence. A brief analysis or oral testimony shall also be prepared and included in such résumé of the hearing not stenographically reported.

### **§ 509.7 Action by the Commission.**

After the conclusions of such hearing and a review of the résumé, the Commission may affirm, modify, or reverse its former action with respect to

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such claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, shall be conclusive and not reviewable by any court.

### **§ 509.8 Application of other regulations.**

To the extent they are not inconsistent with the regulations set forth under provisions of Subchapter B, other regulations of the Commission shall be applicable to the claims as provided under Pub. L. 91-289.

## SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

### PART 531—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

- 531.1 Time for filing.
- 531.2 Form, content and filing of claims.
- 531.3 Exhibits and documents in support of claim.
- 531.4 Acknowledgement and numbering.
- 531.5 Procedure for determination of claims.
- 531.6 Hearings.
- 531.7 Presettlement conference.

**AUTHORITY:** Sec. 3, 64 Stat. 13, as amended; 22 U.S.C. 1622.

**SOURCE:** 28 FR 13498, Dec. 13, 1963, unless otherwise noted.

#### § 531.1 Time for filing.

(a) Claims under Title III of the Act shall be filed with Commission on or before September 30, 1956, except that claims pursuant to section 305 (Soviet claims) shall be filed on or before March 31, 1956.

(b) Claims under Title IV (Czechoslovakian claims) of the Act shall be filed with the Commission on or before September 15, 1959.

(c) Claims under Title I of the Act (Polish claims) shall be filed with the Commission on or before March 31, 1962.

(d) Claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967.

(e) Claims under Title I of the Act pursuant to the Yugoslav Claims Agreement of November 5, 1964, shall be filed with the Commission on or before January 15, 1968.

(f) Claims under Title V of the Act against the Chinese Communist regime shall be filed with the Commission on or before July 6, 1969.

(g) Claims against the Governments of Bulgaria, Rumania, and Italy, in accordance with the Bulgarian Claims Agreement of July 2, 1963, the Rumanian Claims Agreement of March 30,

1960, and subsections (b) and (c) of section 304, title III of the International Claims Settlement Act of 1949, as amended by Public Law 90-421, respectively, must be filed with the Commission on or before June 30, 1970.

(h) Claims against the Government of Hungary, in accordance with the Hungarian Claims Agreement of March 6, 1973, subsection (5) of section 303, and claims referred to under subsection (d) of section 306, Title III of the International Claims Settlement Act of 1949, as amended by Pub. L. 93-460, approved October 20, 1974, must be filed with the Commission on or before May 15, 1975.

(i) Claims under Title VI of the Act against the German Democratic Republic shall be filed on or before May 16, 1978.

(j) Claims under Title VII of the Act against Vietnam shall be filed on or before July 31, 1982.

(Pub. L. 96-606)

[28 FR 13498, Dec. 13, 1963, as amended at 30 FR 13870, Nov. 2, 1965; 32 FR 413, Jan. 14, 1967; 32 FR 15641, Nov. 10, 1967; 33 FR 232, Jan. 6, 1968; 35 FR 82, Jan. 3, 1970; 39 FR 40249, Nov. 15, 1974; 42 FR 24741, May 16, 1977; 46 FR 26062, May 11, 1981]

#### § 531.2 Form, content and filing of claims.

(a) Claims shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its principal office at Washington, D.C., shall include all of the information called for in the appropriate form indicated below, and shall be completed and signed in accordance with the instructions accompanying the form.

(b) FCSC Form 285—Statement of Claim Against the Government of (Bulgaria, Hungary, Rumania, Italy, Soviet Union).

(c) FCSC Form 604—Claim against the Government of Czechoslovakia.

(d) FCSC Form 709—Claim against the Government of the Polish People's Republic.

(e) FCSC Form 666—Claims against the Government of Cuba.

(f) FCSC Form 701—Claims against the Government of Yugoslavia under the Yugoslav Claims Agreement of November 5, 1964.

(g) FCSC Form 780—Claims against the Chinese Communist regime.

(h) FCSC Form 285—A—Statement of Claim against the Government of (Bulgaria, Rumania, and Italy under Title III of the International Claims Settlement Act of 1949, as amended by Pub. L. 90-421, approved July 24, 1968; and Hungary in accordance with the Hungarian Claims Agreement of March 6, 1973, subsection (5) of section 303, and subsection (d) of section 306, Title III of the International Claims Settlement Act of 1949, as amended by Pub. L. 93-460, approved October 20, 1974).

(i) FCSC Form 542—Statement of Claim against the German Democratic Republic.

(j) FCSC Form 606—Statement of Claim against Vietnam.

(k) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing a claims program or the effective date of a lump-sum claims settlement agreement, or an intention to file a claim against a foreign country, shall not be considered as a timely filing of a claim under the statute or agreement.

(l) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

(Pub. L. 96-606)

[28 FR 13498, Dec. 13, 1963, as amended at 30 FR 13870, Nov. 2, 1965; 32 FR 413, Jan. 14, 1967; 33 FR 232, Jan. 6, 1968; 35 FR 82, Jan. 3, 1970; 39 FR 40249, Nov. 15, 1974; 42 FR 24741, May 16, 1977; 46 FR 26062, May 11, 1981]

§ 531.3 Exhibits and documents in support of claim.

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies of originals certified as such by their public or other official custodian.

(b) Documents in foreign language: Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) Preparation of papers: All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

§ 531.4 Acknowledgement and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

§ 531.5 Procedure for determination of claims.

(a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.

(b) Without previous hearing, the Commission or a designated member of the staff may issue a Proposed Decision in determination of a claim.

(c) Such proposed decision shall be delivered to the claimant or his attorney of record in person or by mail. Delivery by mail shall be deemed completed 5 days after the mailing of such proposed decision addressed to the last known address of the claimant or his attorney of record. One copy of the proposed decision shall be available for public inspection at the office of the Commission. Notice of proposed decision shall be posted on the bulletin board at the office of the Commission on the day of its issuance and for 20 days thereafter.



(d) It shall be the policy of the Commission to post on said bulletin board other information of general interest to the claimants before the Commission.

(e) When such proposed decision denies the claim in whole or in part, claimant may within 15 days of service thereof file objections to such denial, assigning the errors relied upon, with accompanying brief in support thereof, and may request a hearing on the claim, specifying whether for the taking of evidence or only for the hearing of oral argument upon the errors assigned.

(f) Public notice shall be promptly posted on said bulletin board of the filing of any objections to, or request for a hearing on any proposed decision.

(g) Upon the expiration of 30 days after such service or receipt of notice, if no objection under this section has in the meantime been filed, such proposed staff decision, when approved by the Commission, shall become the Commission's final determination and decision on the claim. A proposed decision approved by the Commission may become final after 30 days without further order or decision by the Commission.

(h) If any such objections have in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof, (1) issue its final decision affirming or modifying its proposed decision, (2) issue a further proposed decision, or (3) on its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or only for the hearing of oral argument.

(i) After the conclusion of a hearing, upon the expiration of any time allowed by the Commission for further submissions, the Commission may proceed to final decision and determination of the claim.

(j)(1) In case an individual claimant dies prior to the issuance of a Final Decision his legal representative shall be substituted as party claimant. However, upon failure to comply with the foregoing, the Commission may issue its decision in the name of the estate and, in case of an award, certify the

award to the Secretary of the Treasury for payment, if the payment of such award is provided for by statute.

(2) Notice of the Commission's action under this paragraph shall be forwarded to the claimant's attorney of record, or if claimant is not represented by an attorney, such notice shall be addressed to the estate of the claimant at the last known place of residence.

(3) The term "legal representative" as applied in this paragraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).

(k) After the date of filing with the Commission no claim shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.

(l) At any time after a final decision has been issued on a claim, or a proposed decision has become the final decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition shall be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the final decision or the date on which the proposed decision became the final decision; that it was not for want of due diligence that such evidence did not come sooner to his knowledge; and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of such evidence would produce a different decision. Such petition shall include a statement of the facts which the petition expects to prove, the name and address of each witness, the identity of documents, and the reasons for failure to make earlier submission of the evidence.

[28 FR 13498, Dec. 13, 1963, as amended at 30 FR 13870, Nov. 2, 1965; 32 FR 413, Jan. 14, 1967; 44 FR 59908, Oct. 17, 1979]

## **§ 531.6**

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### **§ 531.6 Hearings.**

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, shall be held upon not less than fifteen days' notice of the time and place thereof.

(b) Such hearings shall be open to the public unless otherwise requested by claimant and ordered by the Commission.

(c) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission

of any such evidence shall be ruled upon by the presiding officer.

(d) The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim.

(e) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. Claimants making such a request shall notify the Commission at least ten (10) days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to him.

### **§ 531.7 Presettlement conference.**

The Commission on its own initiative or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

## SUBCHAPTER D—RECEIPT, ADMINISTRATION AND PAYMENT OF CLAIMS FOR BALANCE OF 22.5 PERCENT ON AWARDS MADE UNDER THE PROVISIONS OF THE PHILIPPINE REHABILITATION ACT OF 1946 IN EXCESS OF ₱1,000 (\$500.00) EACH

### PART 540—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

540.1 Claim defined.

540.2 Notice and distribution of claim application forms.

540.3 Time within which claims may be filed.

540.4 Place of filing claims.

540.5 Receipt and acknowledgment of claims.

AUTHORITY: Sec. 4, 76 Stat. 411; 50 U.S.C. App. 1751-1785 note.

SOURCE: 28 FR 13499, Dec. 13, 1963, unless otherwise noted.

#### § 540.1 Claim defined.

(a) A properly completed and executed application made on an official form provided by the Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(b) Claims must be legibly prepared in the English language and submitted in duplicate.

#### § 540.2 Notice and distribution of claim application forms.

Notice as to the provisions of the Act providing payment of awards and claim application forms will be mailed to all qualified claimants at their last known address as reflected by the records of the former Philippine War Damage Commission. If claim forms mailed to claimants are returned to the Commission undelivered, the Commission may take such steps as it may in its discretion adopt with respect to such claim forms and the claims covered thereby.

#### § 540.3 Time within which claims may be filed.

Claims must be filed at the principal office of the Commission at Washington, D.C., or at its field office in

Manila on or before midnight December 23, 1963. Claims not filed within the time limit specified will not be considered except through special action by the Commission.

#### § 540.4 Place of filing claims.

All claims must be filed with the Foreign Claims Settlement Commission at its principal office at Washington, D.C., or its field office in Manila, Philippines. Claims mailed in the Philippines to the Commission should be addressed to its Manila office; those mailed in the continental United States or elsewhere should be addressed to the Washington office of the Commission.

#### § 540.5 Receipt and acknowledgement of claims.

(a) Claim deemed received: A claim will be considered received by the Commission on the date postmarked, if mailed or if delivery is made in person, on the date when delivered to the principal office or field office of the Commission.

(b) A receipt acknowledgement, which is provided with the claim application form, must be self-addressed and must accompany the claim at the time it is filed. This acknowledgment, when returned to the claimant will be his notice that the claim has been received.

### PART 541—PROVISIONS OF GENERAL APPLICATION

Sec.

541.1 Eligible claimants.

541.2 Consideration of claims.

541.3 Burden of proof.

541.4 Investigations.

541.5 Decisions.

541.6 Failure to note change of address.

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541.8 Notification to claimants.

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541.9 Posting.

541.10 Completion of program.

**AUTHORITY:** Sec. 4, 76 Stat. 411; 50 U.S.C. App. 1751-1785 note.

**SOURCE:** 28 FR 13499, Dec. 13, 1963, unless otherwise noted.

### **§ 541.1 Eligible claimants.**

Only those claimants having unpaid balances due on awards as determined by the Philippine War Damage Commission under the provisions of the Philippine Rehabilitation Act of 1946, or their successors in interest, are eligible to file claims.

### **§ 541.2 Consideration of claims.**

In the event that a claim has been so prepared as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official form, as may be essential to the processing thereof. If the evidence or official form requested is not received within the time allotted to claimant to furnish such evidence, the claim may be deemed to have been abandoned and will be disallowed.

[29 FR 14594, Oct. 24, 1964]

### **§ 541.3 Burden of proof.**

The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his right to payment.

### **§ 541.4 Investigations.**

The Commission or its designated representatives shall have the right to make such investigations as may be necessary in carrying out the provisions of the Act.

### **§ 541.5 Decisions.**

Irrespective of the place of filing, processing, or investigation the allowance or denial of a claim will be made by the Commission in Washington, D.C.

### **§ 541.6 Failure to note change of address.**

If after claim is filed under Pub. L. 87-616, any communication mailed to the claimant at the last address furnished to the Commission is

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returned unclaimed, the claim may be disallowed for failure of the claimant to keep the Commission informed of current address. Such claims shall thereupon be sent to the closed files.

### **§ 541.7 Penalties.**

Section 1001, Title 18 of the United States Code provides that whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be liable to criminal penalties. Any person guilty of any act, as provided therein, with respect to any matter under these provisions shall forfeit all rights under the Act, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same. Any person who pays, offers to pay, or promises to pay in excess of 5 per centum of the compensation certified to the claimant by the Commission, for services rendered to claimant in connection with any claim, shall forfeit all rights to benefits and the Commission shall take such action as may be appropriate to recover the same.

### **§ 541.8 Notification to claimants.**

The Commission shall notify all applicants of the approval or denial of their applications and, if approved, shall notify such applicants of the amount for which such applications are approved.

### **§ 541.9 Posting.**

It shall be the policy of the Commission to post on the bulletin board of the Commission notices of decisions which shall be available for public inspection for a period of 20 days. Other information of general interest to the claimants shall also be posted.

### **§ 541.10 Completion of program.**

The Commission shall complete its consideration of the claims encom-



passed by the regulations in this part no later than December 23, 1964.

### PART 542—PAYMENT

#### Sec.

- 542.1 Method of payment.
- 542.2 Reinvestments in Philippines.
- 542.3 Definitions.
- 542.4 Predecessor in interest.
- 542.5 Withholding of certifications for payments.

**AUTHORITY:** Sec. 4, 76 Stat. 411; 50 U.S.C. App. 1751-1785 note.

**SOURCE:** 28 FR 13500, Dec. 13, 1963, unless otherwise noted.

#### § 542.1 Method of payment.

All awards shall be certified to the Secretary of the Treasury of the United States for payment in terms of United States currency at the exchange rate of 2 pesos to 1 dollar. Payments to claimants shall be made in United States dollars or in Philippine pesos at the option of the Secretary of the Treasury and in accordance with such regulations as the Secretary may prescribe.

#### § 542.2 Reinvestments in Philippines.

All payments to claimants residing in the Philippines in amounts over 25,000 pesos or equivalent value in dollars shall be subject to the provisions of section 104(c) of the Philippine Rehabilitation Act of 1946. Claimants residing outside the Philippines must establish to the satisfaction of the Commission that since the date of the loss or damage on account of which the original award was made, they have heretofore invested in such manner as furthered the rehabilitation or economic development of the Philippines.

#### § 542.3 Definitions.

(a) *Residing.* The word "residing" as applied in this part means the usual place or residence of the claimant.

(b) *Original award.* The term "original award" as applied in this part means the sum authorized to be paid by the Philippine War Damage Commission.

#### § 542.4 Predecessor in interest.

No payment shall be made on any claim which was acquired from a pred-

ecessor in interest by purchase, except where such purchase was in the ordinary course of business in connection with the acquisition of all assets of a business firm.

#### § 542.5 Withholding of certifications for payments.

No award shall be certified to the Treasury Department for payment until the time limit as specified under § 543.2 of this subchapter with respect to filing requests for hearings has expired, or unless waiver of a hearing is received from the claimant by the Commission prior to the expiration date of such time limit.

### PART 543—HEARINGS

#### Sec.

- 543.1 Basis for hearing.
- 543.2 Request for hearing.
- 543.3 Notification to claimant.
- 543.4 Failure to file request for hearing.
- 543.5 Purpose of hearing.
- 543.6 Résumé of hearing, preparation of.
- 543.7 Action by the Commission.
- 543.8 Application of other regulations.

**AUTHORITY:** Sec. 4, 76 Stat. 411; 50 U.S.C. App. 1751-1785 note.

**SOURCE:** 28 FR 13500, Dec. 13, 1963, unless otherwise noted.

#### § 543.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the amount of such application shall be entitled to a hearing before the Commission or its representative with respect to such application. Hearings may also be held on the Commission's own motion.

#### § 543.2 Request for hearing.

Claimant shall immediately notify the Commission, in writing, if a hearing is desired, and shall set forth his reasons in full for requesting the hearing, including any statement of law, or facts upon which the claimant relies. Such notifications must be received by the Commission before December 1, 1964, in order to receive consideration.

[29 FR 14594, Oct. 24, 1964]

### § 543.3

#### § 543.3 Notification to claimant.

Upon receipt of a request the Commission shall schedule a hearing and notify the claimant as to the date and place such hearing is to be held. No later than 10 days prior to the scheduled hearing date, claimant shall submit all documents, briefs, or other additional evidence relative to an appeal from the award.

#### § 543.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 543.2 will be deemed to constitute a waiver of right to such hearing and the decisions of the Commission shall constitute a full and final disposition of the case.

#### § 543.5 Purpose of hearing.

(a) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(b) Such hearings may be stenographically reported either at the request of the claimant or at the discretion of the Commission. Claimants making such a request shall notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such re-

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porting and transcription may be charged to him.

(c) Such hearings shall be open to the public.

#### § 543.6 Résumé of hearing, preparation of.

Upon such hearing, the hearing officer shall prepare a résumé of the hearing, specifying the issues on which the hearing was based, list of documents and contents, and other items relative to such questions introduced as evidence. A brief analysis of oral testimony shall also be prepared and included in such résumé if the hearing was not stenographically reported. If such hearing is held outside the continental limits of the United States, the résumé together with the duplicate claim file shall be returned to the Commission's principal office in Washington, D.C., for appropriate action and final disposition.

#### § 543.7 Action by the Commission.

After the conclusion of such hearing and a review of the résumé, the Commission may affirm, modify, or reverse its former action with respect to such claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, shall be conclusive and not reviewable by any court.

#### § 543.8 Application of other regulations.

To the extent they are not inconsistent with the regulations set forth under provisions of Subchapter D, other regulations of the Commission shall be applicable to the Philippine War Damage claims as provided under Pub. L. 87-616.

**SUBCHAPTER E—RECEIPT, ADMINISTRATION AND PAYMENT OF CLAIMS UNDER PUBLIC LAW 87-587 (CLAIMS FOR DAMAGES TO PROPERTY DUE TO THE RAISING OF THE WATER LEVEL OF LAKE ONTARIO CAUSED BY GUT DAM)****PART 560—FILING OF CLAIMS AND PROCEDURE THEREFOR****Sec.****560.1** Time for filing.**560.2** Form content and filing of claims.**560.3** Exhibits and documents in support of claim.**560.4** Acknowledgment and numbering.**560.5** Procedure for determination of claims.**560.6** Hearings.**560.7** Discontinuance of investigations and determinations of claims under Subchapter E.**AUTHORITY:** 76 Stat. 387.**SOURCE:** 28 FR 13501, Dec. 13, 1963, unless otherwise noted.**§ 560.1** Time for filing.

Claims under Pub. L. 87-587 shall be filed with the Commission on or before October 15, 1963.

**§ 560.2** Form content and filing of claims.

(a) Claims shall be filed on the official forms provided by the Commission upon request in writing addressed to the Commission at its principal office at Washington, D.C., and shall include to the extent available at the time, all of the information called for in the claim form (FCSC Form No. 587), and shall be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing this claims program, or of an intention to file a claim for damages caused by the operation and maintenance of Gut Dam, shall not be considered as a timely filing of a claim under Pub. L. 87-587.

(c) Any initial written indication of an intention to file a claim received by

the Commission within 30 days prior to the expiration of the filing period therefor shall be considered as a timely filing of a claim if formalized (submission of a properly executed claim form) within 30 days after the expiration of the filing period.

**§ 560.3** Exhibits and documents in support of claim.

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies of originals certified as such by their public or other official custodian.

(b) All claims, briefs, and memoranda filed shall be typewritten or printed and if typewritten, shall be on legal size paper.

**§ 560.4** Acknowledgment and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

**§ 560.5** Procedure for determination of claims.

The procedures set forth under § 531.5, Subchapter C of this chapter, shall be applicable to claims under Pub. L. 87-587 except as follows:

§ 531.5(g) Upon the expiration of 20 days after such service or receipt of notice, if no objection under this section has in the meantime been filed, such proposed decision shall, without further order or decision of the Commission, become the Commission's final determination and decision on the claim.

§ 531.5(j)(1) In case a claimant dies prior to the issuance of a Final Decision his legal representative shall promptly file proof of his capacity. Thereupon the legal repre-

## **§ 560.6**

sentative shall be substituted as party claimant.

§ 531.5(l) After a final decision has been issued on a claim, or a proposed decision has become the final decision on a claim, a petition to reopen on the ground of newly discovered evidence may be filed; *Provided*, That no such petition will be acted upon if it appears that consideration thereof will unduly delay the Commission's report to the President as required under Pub. L. 87-587.

§ 531.5(m) As soon as practicable after the issuance of all Final Decisions, the Commission will submit to the President of the United States a report and a list of claims determined to be valid, and the amount of each such claim and a list of claims determined to be invalid, for such action by the President as he may deem appropriate.

### **§ 560.6 Hearings.**

Hearings procedures as provided for under § 531.6, Subchapter C of this

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chapter, shall be applicable to claims under Pub. L. 87-587.

### **§ 560.7 Discontinuance of investigations and determinations of claims under Subchapter E.**

The Commission shall discontinue its investigation and determination of claims under this subchapter if the Government of Canada enters into an agreement with the Government of the United States providing for arbitration or adjudication of the claims filed under Pub. L. 87-587. In such case, the Commission will transfer or otherwise make available to the Secretary of State all records and documents relating to these claims or, on the request of the Secretary of State, return to claimants documents filed in support of their claims.



**SUBCHAPTER F—RECEIPT, ADMINISTRATION AND PAYMENT OF CLAIMS UNDER TITLE II OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUBLIC LAW 87-846 AND PROTESTS UNDER PUBLIC LAW 94-542**

**PART 580—FILING OF CLAIMS AND PROCEDURES THEREFOR**

Sec.

580.1 Time for filing.

580.2 Form, content and filing of claims.

580.3 Exhibits and documents in support of claim.

580.4 Acknowledgment and numbering.

580.5 Small business concerns.

580.6 Claims by corporation in excess of \$10,000.

580.7 Procedure for determination of claims.

580.8 Hearings.

AUTHORITY: Secs. 2, 103, 62 Stat. 1240, 76 Stat. 1112, 50 U.S.C. App. 2001, 2017n.

SOURCE: 28 FR 13501, Dec. 13, 1963, unless otherwise noted.

**§ 580.1 Time for filing.**

Claims under Title II of the War Claims Act of 1948, as amended by Pub. L. 87-846, shall be filed with the Commission on or before January 15, 1965.

[29 FR 9539, July 14, 1964]

**§ 580.2 Form, content and filing of claims.**

(a) Claims shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its principal office at Washington, D.C., and shall include, to the extent available at the time, all of the information called for in the claim form (FCSC Form 846), and shall be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing this claims program of an intention to file a claim for World War II losses, shall not be considered as a timely filing of a claim under Pub. L. 87-846.

(c) Any initial written indication of an intention to file a claim received by the Commission within 30 days prior to the expiration of the filing period therefor shall be considered as a timely filing of a claim if formalized (submission of a properly executed claim form) within 30 days after the expiration of the filing period.

**§ 580.3 Exhibits and documents in support of claim.**

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim and shall, wherever possible, be in the form of original documents, or copies of original documents certified as such by their public or other official custodian.

(b) Documents in foreign language. Each copy of a document, exhibit or paper filed, which is written in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) Preparation of papers. All claims, briefs and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

**§ 580.4 Acknowledgment and numbering.**

The Commission will acknowledge the receipt of a claim and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

**§ 580.5 Small business concerns.**

Any corporation or commercial entity for the purpose of receiving priority payment from the Secretary of the Treasury under section 213(a) of the War Claims Act of 1948, as amend-

## § 580.6

ed, must so indicate on the official claim form (FCSC Form 846). In due course, the Foreign Claims Settlement Commission will request the director, Office of Small Business Size Standards, to determine the size status of such claimant pursuant to such rules and regulations as may be promulgated by that office, provided that the claimant qualifies under section 202(a) of the War Claims Act of 1948, as amended.

### § 580.6 Claims by corporation in excess of \$10,000.

A statement under oath is required from corporations filing claims in excess of \$10,000, disclosing the aggregate amount of Federal tax benefits derived by such corporation in any prior tax year or years resulting from any deduction or deductions claimed for the loss or losses with respect to which such claim is filed. Pursuant to the Act, such Federal tax benefits shall be the aggregate of the amounts by which the claimants' taxes for such year or years under chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code of 1939 (53 Stat. 4), or subtitle A of the Internal Revenue Code of 1954 (68A Stat. 4, 26 U.S.C. 1 et seq.) were decreased by reason of such loss or losses.

### § 580.7 Procedure for determination of claims.

The procedures set forth under § 531.5, Subchapter C of this chapter, shall be applicable to claims filed pursuant to Title II of the War Claims Act of 1948, as amended by Pub. L. 87-846.

[30 FR 13870, Nov. 2, 1965]

### § 580.8 Hearings.

Hearings procedures as provided for under § 531.6, Subchapter C of this chapter, shall be applicable to claims under this subchapter.

## PART 581—FILING OF PROTESTS AND PROCEDURES THEREFOR

### Sec.

#### 581.1 Time for filing.

#### 581.2 Information required for filing protests.

#### 581.3 Hearings.

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AUTHORITY: Pub. L. 94-542.

SOURCE: 41 FR 49094, Nov. 8, 1976, unless otherwise noted.

### § 581.1 Time for filing.

Protests of United States nationals relating to awards made by the Commission during the 10 calendar days immediately preceding the May 17, 1967, expiration date of the Commission's authority to grant awards for war damage losses which occurred during World War II under the provisions of Pub. L. 87-846, approved October 22, 1962, which amended the War Claims Act of 1948, as amended, authorized by section 615 of Pub. L. 94-542, approved October 18, 1976, shall be filed with the Commission on or before February 7, 1977.

### § 581.2 Information required for filing protests.

(a) No official form is required for filing a protest. Protests shall be filed, in writing, signed by the claimant or his legal representative. The protest shall include: (1) The name of the claimant as set forth in the Commission's decision issued on the claim under Pub. L. 87-846; (2) the claim number previously assigned by the Commission; (3) the grounds for the protest, amount of increase in the award requested, together with all documentation and legal argument which the claimant wishes the Commission to consider in determining the merits of the protest; (4) a specific request for a hearing, if desired.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing the protests referred to herein shall not be considered as a timely filing of a protest under Pub. L. 94-542.

### § 581.3 Hearings.

(a) Upon specific written request, made at the time of filing the protest, the Commission may grant the claimant a hearing for the presentation of oral testimony and argumentation in support of the protest.

(b) Hearings shall be held upon not less than seven days notice.

(c) Hearing procedures as provided for under § 531.6(b)–(d), Subchapter C of this chapter shall be applicable to protests under this subchapter.

(d) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. Claimants making such a request shall notify the Commission at the time of filing the protest. When a stenographic record of a hearing is or-

dered at the claimant's request, the cost of such reporting and transcription is his responsibility.

(e) Subsequent to the hearing, if any, the Commission will issue a final determination on the protest within the remaining 30 days from the date of filing of the protest, and no appeal from such determination shall be granted.

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## CHAPTER VI—NATIONAL SCIENCE FOUNDATION

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**PART 600—STANDARDS OF CONDUCT OF EMPLOYEES AND CONSULTANTS**

**Subpart A—Employee Conduct, Outside Activities, and Conflicts of Interest**

**Sec.**

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- 600.735-24 Resolution of possible conflicts-of-interest situations.

**APPENDIX**

**AUTHORITY:** E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supp.; 5 CFR 735.104.

**SOURCE:** NSF Circular 54, 31 FR 4595, Mar. 18, 1966, unless otherwise noted.

**Subpart A—Employee Conduct, Outside Activities, and Conflicts of Interest**

**§ 600.735-1 Purpose.**

As required by Executive Order 11222 of May 8, 1965 and Part 735 of Chapter I, Title 5 of the Code of Federal Regulations, this subpart sets forth National Science Foundation policies and procedures with respect to employee conduct, certain permissible and prohibited outside activities, and possible conflicts-of-interest situations.

**§ 600.735-2 Scope.**

The policies and procedures contained in this subpart apply to all NSF employees.

**§ 600.735-3 Statutory provisions.**

Each employee is responsible for acquainting himself not only with the provisions of this subpart, but also with applicable portions of each Federal statute relating to his conduct as an employee of the Foundation and of the U.S. Government. The Personnel Office will call this subpart to the attention of all employees at least once a year and will provide a copy of the part to each new full-time employee who joins the Foundation. (A list of pertinent statutes is provided in the Appendix to this part.)

**§ 600.735-4 Policy.**

Confident of the integrity and sense of responsibility of its employees, it is the intent of the Foundation to impose on employees' conduct, activities, and financial interests those prohibitions, and limitations that are required by law or Federal regulation.

**§ 600.735-5 Conflicts-of-Interest Review Panel.**

To assist the Director in making judgments regarding conflicts-of-interest situations, there is hereby established a Conflicts-of-Interest Review Panel, which is assigned duties and responsibilities as set forth in § 600.735-7. The Panel consists of the General Counsel as Chairman, and the Deputy Director, Planning Director, and Associate Directors for Education and Research as members. The Director shall appoint an Executive Secretary of the Panel and may specify other or additional members as needed.

[NSF Circ. 54, 31 FR 4595, Mar. 18, 1966, as amended at 33 FR 746, Jan. 20, 1968]

**§ 600.735-6 Conflicts-of-Interest Counselor.**

The attorney in the Office of the General Counsel who has responsibilities for conflicts-of-interest matters is designated the Conflicts-of-Interest Counselor, with responsibilities for providing, on request from any Foundation employee, counsel regarding conflicts-of-interest regulations and requirements, as well as their applicability in particular situations. Each Foundation employee is responsible for seeking the advice of the Conflicts-

of-Interest Counselor whenever it appears that he may be, or may become, involved in a possible conflict-of-interest situation. Any supervisor in the Foundation may refer to the Conflicts-of-Interest Counselor any possible conflict-of-interest situation involving a subordinate of his whenever he deems such action appropriate. In such cases the subordinate concerned shall be informed that the matter has been referred for consideration and shall be afforded the opportunity to state his case.

**§ 600.735-7 Resolution of possible conflicts-of-interest situations.**

(a) *The General Counsel.* The General Counsel is responsible for reviewing conflicts-of-interest matters brought to his attention by the Executive Secretary of the Panel or the Conflicts-of-Interest Counselor, and for attempting to work with the employees concerned in resolving such situations, and for offering employees an opportunity to explain any conflict or appearance of conflict. He is responsible for bringing to the attention of the Panel any conflicts-of-interest situation that has not in his opinion been satisfactorily resolved through the above procedures. He will not, however, refer to the Panel, nor will the Panel consider any conflicts-of-interest matter which the General Counsel believes to be a violation of law. He will refer such matters to the Director for decision and appropriate action. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

(b) *Conflicts-of-Interest Review Panel.* The Panel will consider those matters brought to its attention by the General Counsel, will direct the Executive Secretary to obtain any additional information deemed necessary, and will state in writing the conclusions it reaches. The Chairman of the Panel may refer any conflicts-of-interest matter to the attention of the Director whenever this appears desirable, as, for example, in a case where the Panel is unable to reach a unanimous judgment upon a matter which has been referred to it. Similarly, if an employee disagrees with the outcome

of the Panel's deliberations, he may bring the matter to the attention of the Director for his consideration and such action as the Director may deem appropriate.

(c) *Disciplinary and other remedial actions.* When there is a final decision that a conflict-of-interest situation requires disciplinary or other remedial action, such action shall be taken promptly to end the conflict or appearance of conflict of interest and to carry out any appropriate disciplinary measure. Any action taken, whether disciplinary or otherwise, shall be effected in accordance with applicable laws, Executive orders, Civil Service Commission regulations and the regulations in this part. The action taken may involve, among other things:

- (1) Changes in existing duties;
- (2) Divestment by the employee of his conflicting interest;
- (3) Appropriate disciplinary action, up to and including removal;
- (4) Disqualification for a particular assignment.

**§ 600.735-8 Statements of employment and financial interests.**

(a) *General requirement.* Statements of employment and financial interests are required of all Federal employees occupying positions at or above grade 13, or equivalent, which require the exercise of judgment in making a Government decision or in taking a Government action in regard to:

- (1) Contracting or procurement;
- (2) Administering or monitoring grants or subsidies;
- (3) Regulating or auditing private or other non-Federal enterprise; or
- (4) Other activities where the decision or action has an economic impact on the interest of a particular non-Federal enterprise.

(b) *Foundation requirement.* In order to fulfill the Foundation's obligations under the general Government requirement described in paragraph (a) of this section, it has been determined that a Statement of Employment and Financial Interests must be completed and submitted in accordance with the procedures set forth in this section by all Foundation employees occupying positions of grade 14 or

equivalent or above, with the exception of the GS-14 and GS-15 positions in the following offices: Budget Office; Finance Office; Management Analysis Office; Personnel Office; as well as by all employees occupying the positions specified below:

(1) All employees occupying grades 13, or equivalent and above positions in:

- (i) Contracts Office;
- (ii) Indirect Cost (Rate) Determination Office;
- (iii) Internal Audit Office;
- (iv) Grants Office;
- (v) Administrative Services Office;
- (vi) Office of the General Counsel.

(c) *Inclusion and exclusion of positions.* Whenever appropriate, the Director may amend paragraph (b) of this section to include additional positions that entail submission of such statements or may exclude any positions listed in that paragraph (b) the inclusion of which is not required by the general requirement in paragraph (a) of this section. Each supervisor in the Foundation is responsible for bringing to the attention of the Director (through appropriate channels) any position which the supervisor believes should be covered or excluded by this requirement. If an employee feels that he has been improperly included under the regulations in this part, he may appeal his inclusion in accordance with the provisions of NSF Circular No. 29, Grievances and Appeals.

(d) *Submission of original and supplementary statements.* Each employee covered by this requirement shall complete the statement if one has not been completed previously, or a supplementary statement, whichever is appropriate, and submit it to the Executive Secretary of the Conflicts-of-Interest Review Panel by September 30, 1967. Each new affected employee shall complete and submit the statement within 30 days after his entrance on duty or by September 30, 1967, whichever date is later. All changes in, or additions to, the information contained in each employee's original statement must be reported in a supplementary statement submitted as of June 30 each year. If no changes or additions occur, a negative report is re-

quired. The Executive Secretary is responsible for obtaining the initial statements from all affected employees and the supplementary statements at the end of each fiscal year. The Executive Secretary will review all statements for possible conflicts-of-interest situations in accordance with the provisions of this subpart. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code.

(e) *Interests of employees' relatives.* For purposes of the statement, the interests of a spouse, minor child, or any other member of an employee's immediate household who is a blood relation of the employee, are considered to be interests of the employee.

(f) *Information not known by employees.* If information required to be included on the statement of employment and financial interests (supplementary or otherwise, including holdings placed in trust) is not known by the employee but is known to another person, the employee shall request such other person to submit the information on his behalf.

(g) *Information not required.* Employees are not required to submit information relating to their financial interests in any professional society not conducted as a business enterprise as described in the next sentence, charitable, religious, social, fraternal, recreational, public service, civic, political, or similar organization not conducted as a business enterprise. Professional societies, educational institutions and other nonprofit organizations engaged in research, development, or related activities involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in employees' statements of employment and financial interests. The following financial interests are also exempted from the requirements of this section and from clause (1) of section 208(b), Pub. L. 87-849 (18 U.S.C. 208):



(1) Ownership of noncorporate bonds;

(2) Ownership of shares in a mutual fund;

(3) Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed \$5,000, and provided such stocks and securities are listed for trading on the New York or American stock exchanges. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities;

(4) Remainder interest in any trust over which the employee does not have any right of control and the investments of which do not exceed the limitations specified in paragraph (g)(3) of this section.

(h) *Effect of employees' statements on other requirements.* The statements of employment and financial interests and supplementary statements required of employees are in addition to, and are not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or Executive order. The submission of the statement or supplementary statement by an employee does not permit him or any other person to participate in any matter in which his or the other person's participation is prohibited by law, regulation, or Executive order. Employees are required to notify their supervisor of any conflicts-of-interest between their Foundation duties and an organization with which they are negotiating for employment, and subsequently to divest themselves of said duties.

(i) *Confidentiality of employees' statements.* Each statement of employment and financial interest and each supplementary statement will be held in strictest confidence. The Executive Secretary shall maintain the confidential file of statements in such a manner that access to, or the disclosure of information from, a statement shall not be allowed except to carry out the purpose of this part.

[NSF Circ. 54, 31 FR 4595, Mar. 18, 1966, as amended at 33 FR 746, Jan. 20, 1968; 33 FR 2388, Jan. 31, 1968]

#### § 600.735-9 Employee conduct.

(a) *General:* The Foundation assumes that each employee will conduct himself in a manner that will not discredit or embarrass himself or the Foundation. However, it is pointed out that the violation of the regulations in this part or any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct on the part of an employee (whether in official duty status or not) is cause for immediate disciplinary action, up to and including removal.

(b) *Indebtedness:* Employees are expected to meet their financial obligations and not to take advantage of the fact that their wages are not subject to garnishment for private debts. Failure to meet just financial obligations in a proper and timely manner may result in disciplinary action, up to and including removal. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require NSF to determine the validity or amount of the disputed debt.

(c) *Payment of taxes:* Employees are expected to meet their obligation for payment of taxes to Federal, State, and local authorities. Delinquency in payment of Federal, State, and local taxes is cause for disciplinary action, up to and including removal. Federal agencies are required to furnish State taxing authorities (including the District of Columbia) with a copy of Form W-2 indicating annual earnings and Federal income tax withheld. Employees are authorized to pay delinquent Federal taxes by payroll deduction, provided that they make satisfactory arrangements with the Internal Revenue Service to liquidate their tax liabilities in this manner. When such arrangements are not made, District Di-

rectors of Internal Revenue have the authority to levy upon the salaries of Federal employees for the full amount of delinquent Federal income tax.

(d) Financial interests: Any employee may hold financial interests and engage in financial transactions in the same way as any private citizen not employed by the Foundation: *Provided*, That such interests or activities are not prohibited by law, Executive order, or the regulations in this part. In particular, no employee may have any direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his duties and responsibilities as a Foundation employee. No employee shall carry out Foundation duties involving any organization in which he has a direct or indirect financial interest, except an organization or financial interest the reporting of which is waived under § 600.735-8(g). No employee shall engage directly or indirectly in any financial transaction resulting from, or primarily relying on, information obtained through his employment.

(e) Participation in NSF grants by former NSF employees: In cases not directly coming under the prohibitions of 18 U.S.C. 207 (relating to activities of former Government officials), the following rules shall apply:

(1) Where an employee on leave of absence from his university or other organization has suspended work on an NSF grant or contract to become a Foundation employee, he may resume his work under the grant or contract immediately upon terminating his service with the Foundation. He may also apply at once to the Foundation for support for his resumed activities.

(2) In addition to the statutory bars against ever dealing with the U.S. Government in connection with a particular matter in which he participated personally and substantially while an employee, and against dealing with the Government for 1 year after leaving in connection with a matter under his official responsibility while in the Government, a former regular employee of the Foundation may not negotiate with NSF, with a view to obtaining support for himself or his organization, by grant, contract, or otherwise,

within 1 year after having left NSF, except with the written authorization of the Director.

(3) Former employees of the Foundation may not be compensated directly from an NSF grant or contract within 1 year of their leaving the Foundation, except with the written permission of the Director.

(f) Gifts, entertainment, and favors: (1) Employees may not solicit or accept directly or indirectly from any person, institution, corporation, or group, anything of economic value as a gift, gratuity, favor, entertainment, or loan, which might be reasonably interpreted by others as being of such a nature that it would affect his impartiality. This is especially applicable in those instances where the employee has reason to believe that the person, institution, corporation, or group:

(i) Has, is seeking, or is likely to seek assistance, support, or funds from the Foundation; or

(ii) Conducts operations or activities which are involved with, or are supported by, the Foundation; or

(iii) Has interests which might be substantially affected by the employee's performance or nonperformance of duties; or

(iv) May be attempting to affect the employee's official actions.

(2) As required by law (5 U.S.C. 7351), no employee shall solicit contributions from another employee for a gift to an official superior. A superior shall not accept a gift obtained from contributions from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior position. However, it is not intended that this paragraph prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(3) Employees are not permitted to accept a gift, or decoration, or other objects from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(4) Employees may accept promotional material of nominal intrinsic value such as pens, pencils, note pads, calendars, etc. Employees may on in-

frequent occasions accept items of nominal value such as food in the ordinary course of a luncheon or dinner meeting, site visit, or professional conference when the employee is properly in attendance.

(g) Outside employment: (1) Employees shall not engage in any outside employment or other outside activity not compatible with the full and proper discharge of their Foundation duties and responsibilities. Incompatible activities include, but are not limited to, acceptance of anything of monetary value which may result in or create the appearance of a conflict of interest.

(2) Employees shall not engage in outside employment which tends to impair their health or capacity to discharge acceptably their duties and responsibilities.

(3) Employees shall not receive anything of monetary value from a private source as compensation for their activities as Foundation employees.

(4) Employees shall not engage in teaching, lecturing, or writing which is dependent on official information obtained as a result of Government employment, except when the information has been, or is being made available to the general public, or will be made available to the public on request, or when the Director or Deputy Director gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. However, employees are encouraged to engage in teaching, lecturing, and writing not prohibited by the regulations in this part, by law, or by Executive order.

(5) Employees shall not receive anything of monetary value for any consulting, lecturing, discussion, writing, or presentation, the subject of which is devoted to the responsibilities, programs, or operations of the Foundation, or which draws on official data or ideas which have not become part of the body of public information.

(6) Employees shall not serve as organizers or directors of scientific conferences, colloquia or similar events supported by grant or contract from the Foundation, but may otherwise participate in such events provided they do not receive any compensation

or economic benefit for such participation.

(7) Employees shall avoid any action whether or not specifically prohibited which might result in or create the appearance of:

(i) Using public office for private gain;

(ii) Giving preferential treatment to any person;

(iii) Impeding Government efficiency or economy;

(iv) Losing complete independence or impartiality;

(v) Making a Government decision outside official channels; or

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(8) Employees may, however, participate in the affairs of, and accept an award for meritorious public contribution or achievement given by a charitable, religious, fraternal, educational, recreational, public service, or civic organization.

(h) Advice or assistance to nonprofit or commercial organizations: The conditions under which employees may offer assistance or advice to nonprofit or commercial organizations are set forth in this paragraph (h).

(1) *General rule.* While not on official duty, an employee may provide advice or assistance and receive compensation therefor, to either nonprofit or commercial organizations, provided that such services are unrelated to his activities at the Foundation and do not draw upon information deriving from Government sources not publicly available.

(2) *Specific situations*—(i) *Visiting committees.* Except with the specific approval of the Director, employees should not participate in the deliberations of a college or university visiting committee; however, an employee may meet with such groups as a Foundation official where it would be appropriate to attend a similar meeting with any other comparable group requesting his assistance.

(ii) *Participation in non-Federal research institutions.* Except with the specific approval of the Director, employees may not participate in any way in the policy making or administration of a non-Federal research insti-



tution which receives or is eligible to receive funds from a Federal agency.

(iii) *Membership and office holding in professional societies.* Except with the specific approval of the Director, an employee may be a member of a professional society, but may not serve as an officer except where the society has not received any support from the Foundation during the preceding three years and the employee has no reason to expect it to seek support during the tenure of his office. If the society later requests support from the Foundation, the employee should resign his office in the society or request permission to remain in such office.

(i) *Misuse of information:* For the purpose of furthering a private interest, employees shall not (except as provided in paragraph (g)(4) of this section) directly or indirectly use, or allow the use of, official information obtained through, or in connection with, his Government employment which has not been made available to the general public.

(j) *Compensation from NSF-awarded funds:* No employee may receive any compensation either directly or indirectly from NSF funds awarded to contractors or grantees.

(k) *Use of Federal property:* No employee may use Federal property or facilities of any kind for other than officially approved activities. Every employee has the responsibility to protect and conserve all Federal property which has been entrusted to him.

(l) *Exercise of notary powers:* Employees who are notaries public may not charge or receive any compensation for performing any notarial act during working hours, including the luncheon period.

(m) *Political activity:* Restrictions in this section are applicable to employees on leave, leave without pay, or furlough, as well as to other regular employees of the Foundation. Individuals whose employment is on an intermittent basis (not occupying a substantial portion of their time) are subject to the political-activities restrictions only while they are in an active-duty status. The period of active-duty status for a particular employee includes the entire 24-hour period of any day of

actual employment. The Federal Personnel Manual contains information on such restrictions. Copies of the Federal Personnel Manual may be consulted in the Personnel Office. If an employee is in doubt about permissible activities, he should contact the Personnel Office for clarifications.

(1) Employees may not use their official positions or influence for the purpose of interfering with an election and they may not take an active part in political management or in political campaigns, except as provided in paragraphs (m) (4) and (5) of this section.

(2) No employee may discriminate against another employee because of his political opinions or affiliations.

(3) An employee may not become a candidate for nomination or election to a Federal, State, county, or municipal office on a partisan political ticket. Nor may an employee become a candidate as an independent when opposed by a partisan political candidate, except as provided in paragraph (m) (4) of this section.

(4) Certain political subdivisions in the vicinity of Washington, D.C., as well as other municipalities, designated by the CSC, have been granted a limited exception to the rules prohibiting political management or candidacy for local office. In such municipalities, employees may become candidates as independents, even when opposed by partisan political candidates.

(5) In general, the Foundation encourages employees to be candidates for, and to hold, State, county, or municipal offices of a nonpartisan nature when permitted by law. Employees desiring to be candidates for or to hold a State or local office or to undertake the political management of a candidacy for such office, must first secure the approval of the head of their Division or Office, and then forward their request to the Personnel Officer for approval.

(6) Full-time employees, with the prior consent of the Director, may hold positions under a State or local government on a part-time basis only. Intermittent employees may hold full-time or part-time State or local government positions. In both cases, the above restrictions on political activity must be observed.



(n) An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, such as a lottery or the sale or purchase of numbers, etc.

[NSF Circ. 54, 31 FR 4595, Mar. 18, 1966, as amended at 33 FR 747, Jan. 20, 1968; 33 FR 11904, Aug. 22, 1968; 35 FR 13133, Aug. 18, 1970]

**§ 600.735-10 Presenting grievances to Congress.**

Nothing in this subpart shall be construed as abridging in any way the right of employees, either individually or collectively, to petition Congress, or any member thereof or to furnish information when appropriate to either House of Congress, or to any committee or member thereof.

**Subpart B—Standards of Conduct for Consultants**

**§ 600.735-20 Purpose.**

(a) In order to meet the requirements of the Civil Service Commission pertaining to conflicts of interest and ethical conduct, this subpart prescribes NSF policy and procedures governing all NSF consultants and shall serve as formal notification of the conditions for serving as consultants. Acceptance of the appointment as consultant signifies that the consultant is subject to and will abide by the conditions set forth in this subpart.

(b) To promote the highest possible standards of honesty, integrity, and impartiality in the conduct of its business, the National Science Foundation conveys to all consultants the regulations in this subpart as an aid in the avoidance of actual or apparent conflicts of interest and misconduct.

**§ 600.735-21 Scope.**

This subpart applies to every consultant appointed by the National Science Foundation and is based upon the standards of ethical conduct described in Executive Order 11222. For the purpose of this subpart, "consultant" means a person retained, designated, appointed or employed by NSF with or without compensation, to perform temporary duties either in a full-

time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days.

**§ 600.735-22 Consultant conduct.**

(a) A consultant shall not use his position for the actual or apparent purpose of private gain for himself or another person, particularly one with whom he has family business or financial ties, nor shall he convey inside information (that which has not become part of the body of public information and that would not be available upon request) directly or indirectly to any person for the purpose of private gain for himself or another person, particularly one with whom he has family business or financial ties.

(b) A consultant shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Director gives written authorization for the use of non-public information on the basis that the use is in the public interest.

(c) A consultant shall not use his position with the Foundation to coerce or give the appearance of coercing a person to provide private gain for himself or another person.

(d) A consultant shall not, in connection with his NSF duties, receive or solicit from anyone having business with the Foundation anything of value such as a gift, gratuity, loan, or entertainment for himself or another person. (This does not prohibit the infrequent acceptance of unsolicited advertising or promotional materials of nominal value such as pens, note pads, or calendars, or the acceptance of food or refreshments of nominal value characteristic of luncheon or dinner meetings.)

(e) A consultant shall adhere to the same standards of conduct made applicable to employees of the National Science Foundation by § 600.735-9 (a) through (d), (f), and (k) through (n).

**§ 600.735-23 Statements of employment and financial interests.**

(a) At the time of appointment, each consultant shall complete and submit to the Personnel Office, National Science Foundation, the form entitled "Statement of Employment and Financial Interests." Present consultants must submit such statement not later than June 30, 1966. It is necessary that the consultant report all Federal and non-Federal employment, as well as those financial interests which relate either directly or indirectly to his Foundation duties or responsibilities. Inquiries as to whether financial interests relate directly or indirectly to his duties or responsibilities should be directed to the Conflicts-of-Interest Counselor, National Science Foundation.

(b) Consultants are not required to submit information relating to their financial interests in any professional society not conducted as a business enterprise as described in the next sentence, charitable, religious, social, fraternal, recreational, public service, civic, political, or similar organization not conducted as a business enterprise. Professional societies, educational institutions and other nonprofit organizations engaged in research, development, or related activities involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in consultants' statements of employment and financial interests.

(c) Each consultant must file a supplementary statement of employment and financial interests whenever a significant change occurs in either employment or financial interests to keep his record current.

(d) All original and supplementary statements of employment and financial interests will be held in strictest confidence. The Executive Secretary shall maintain the confidential file of statements in such a manner that access to, or the disclosure of information from a statement shall not be allowed except to carry out the purpose of this part.

(e) It should be noted that the statements of employment and financial interests and supplementary statements

required of consultants are in addition to, and are not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or Executive order. The submission of the statement or supplementary statement by a consultant does not permit him or any other person to participate in any matter in which his or the other person's participation is prohibited by law, regulation, or Executive order. It is the responsibility of each consultant to acquaint himself with the relevant statutes. A listing of such statutes is provided in the Appendix to this part. Upon request, the Personnel Office, National Science Foundation will provide excerpts of pertinent portions of these statutes.

[NSF Circ. 54, 31 FR 4595, Mar. 18, 1966, as amended at 33 FR 747, Jan. 20, 1968]

**§ 600.735-24 Resolution of possible conflicts-of-interest situations.**

(a) The Conflicts-of-Interest Counselor of the Foundation is available to provide advice and guidance to each consultant requiring counsel regarding possible conflicts-of-interest situations and will offer the consultant an opportunity to explain any conflict or appearance of conflict. Whenever a consultant has reason to believe that a present or proposed activity or financial interest of his might conflict or might appear to conflict with Government statutes or regulations, he should bring the matter to the attention of the Conflicts-of-Interest Counselor. The Conflicts-of-Interest Counselor will discuss such matters with the consultant, as well as any other possible conflicts-of-interest situations revealed by the statement of employment and financial interests.

(b) Conflicts-of-interests situations that cannot be resolved through their discussions will be presented to the General Counsel, who, if necessary, will refer the matter to the Director of the Foundation for resolution. In rare cases when it is not possible to resolve the conflict-of-interest situation by changing the consultant's duties or by his divesting himself of his conflicting interest, it may be necessary to request he resign his appointment.

## APPENDIX

The following is a list of statutes related to the ethical and other conduct of Government employees. Upon request, pertinent excerpts of these statutes will be made available by the Personnel Office.

1. House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

2. Chapter II of Title 18, United States Code, relating to bribery, graft, and conflicts-of-interest, as appropriate to the employees concerned.

3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

4. The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

5. The prohibition against the employment of a member of the Communist organization (50 U.S.C. 784).

6. The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

7. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

8. The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

9. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

10. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

11. The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

12. The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

13. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

14. The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

15. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

16. The prohibition against political activities in subchapter III of Chapter 73 or Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

17. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

18. The prohibition against the holding of a position in the Government of the United States or of the District of Columbia by anyone convicted of a felony related to the inciting, promoting, encouraging or partici-

pating in a riot or civil disorder (5 U.S.C. 7313).

[NSF Circ. 54, 33 FR 747, Jan. 20, 1968, as amended at 33 FR 11904, Aug. 22, 1968]

## PART 601—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

### Sec.

601.1 Purpose.

601.2 Classification authority.

601.3 Security program.

601.4 Classification Review Committee.

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601.8 Access to classified materials.

601.9 Access by historical researchers and former Presidential appointees.

**AUTHORITY:** E.O. 12065, 43 FR 28949, June 28, 1978.

**SOURCE:** 45 FR 1422, Jan. 7, 1980, unless otherwise noted.

### § 601.1 Purpose.

Pursuant to Executive Order 12065 and Information Security Oversight Office Directive No. 1, the National Science Foundation [Foundation] issues the following regulations. The regulations identify the information to be protected, prescribe classification, declassification, downgrading, and safeguarding procedures to be followed, and establish a monitoring system to ensure the regulations' effectiveness.

### § 601.2 Classification authority.

Executive Order 12065 removed the Foundation's prior authority for original classification of national security information as "SECRET" and "CONFIDENTIAL". In any instance where a Foundation employee develops information that appears to warrant classification because of its national security character, the material will be afforded protection and sent to the Administrative Services Branch (ASB). Upon determination that classification is warranted, ASB will submit such material to the agency that has appropriate subject matter interest and classification authority.



## **§ 601.3**

### **§ 601.3 Security program.**

The Chief, Administrative Services Branch, is responsible for conducting a security program that ensures effective implementation of Executive Order 12065, to include:

(a) Maintaining active training and orientation programs for employees concerned with classified information or material.

(b) Encouraging Foundation personnel to challenge those classification decisions they believe to be improper.

(c) Issuing directives that ensure classified information is used, processed, stored, reproduced and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(d) Recommending to the Director appropriate administrative action to correct abuse or violation of any provision of these regulations, including notification by warning letters, formal reprimand, and to the extent permitted by law, suspension without pay and removal.

### **§ 601.4 Classification Review Committee.**

The Security Officer (Information) chairs the Foundations's Classification Review Committee which has authority to act on all suggestions and complaints with respect to the Foundation's administration of the regulations. The Assistant Directors and the Heads of other offices reporting to the Director serve as members of the Committee. All suggestions and complaints including those regarding overclassification, failure to classify, or delay in declassifying not otherwise resolved, shall be referred to the Committee for resolution. The Committee shall establish procedures to review and act within 30 days upon all appeals regarding requests for declassification. The Committee is authorized to overrule previous determinations in whole or in part when in its judgement, continued protection is no longer required. If the Committee determines that continued classification is required under the criteria of the Executive Order, it shall promptly so notify the requester and advise him that he may file an application for review with the Foundation. In addition, the Committee shall review all appeals of re-

## **Title 45—Public Welfare**

quests for records under section 552 of Title 5 U.S.C. (Freedom of Information Act) when the proposed denial is based on their continued classification under Executive Order 12065.

### **§ 601.5 Derivative classification.**

Distinct from "original" classification is the determination that a document must be classified because it contains paraphrases, restatements, or summaries of, or incorporates in new form, information previously classified by proper authority. Authority to apply derivative classification is granted the Director and Assistant Directors, who may delegate this responsibility to the Division level. Original classification decisions must be respected, and to the extent practicable, the current level of classification should be verified through the original classification authority. The newly created document must be marked with the current level of classification and the declassification or review markings and any additional authorized markings in accordance with the following paragraphs.

(a) New material that derives its classification from information classified on or after December 1, 1978, shall be marked with the declassification date or event, or the date for review, assigned to the source information.

(b) New material that derives its classification from information classified under prior Orders shall be treated as follows:

(1) If the source material bears a declassification date or event twenty years or less from the date of origin, that date or event shall be carried forward on the new material.

(2) If the source material bears no declassification date or event or is marked for declassification beyond twenty years, the new material shall be marked with a date for review for declassification at twenty years from the date of original classification of the source material

(3) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification beyond thirty years, the new material shall be



marked for review for declassification at thirty years from the date of original classification of the source material.

#### § 601.6 Downgrading and declassification.

(a) Executive Order 12065 is intended to improve protection against unauthorized disclosure of national security information or material while increasing openness in Government by limiting classification and accelerating declassification. Declassification shall be given emphasis comparable to that accorded classification, with declassification action taken as early as national security considerations permit. The loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event shall form the basis for the decision to declassify. Foundation documents given original classification prior to December 1, 1978 may be declassified by the authorizing official, a successor, or by a supervisory official of either.

(b) Information given original classification by the [see 3-4] Foundation prior to December 1, 1978, and not in the possession and control of the General Services Administration, must receive a systematic review for declassification as it becomes twenty years old. Any records considered to require extension of classification must be submitted to an official designated under E.O. 12065 as having original classification authority. Absent such extension, or a prior automatic declassification date, the information is declassified automatically as the end of twenty years from the date of original classification. Exempt from such automatic declassification and the twenty year systematic review is foreign government information. Such information, unless declassified earlier, will be given a declassification review thirty years from its date of origin. As used herein, "foreign government information" is information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence; or information produced by the United States pursuant to a written joint agreement with

a foreign government or international organization of governments requiring that either the information or the arrangements, or both be kept in confidence.

#### § 601.7 Mandatory declassification review.

(a) The Administrative Services Branch is hereby designated as the office to which members of the public or Departments may direct requests for mandatory review for declassification under this provision. In the case of documents originally classified by the Foundation, this office shall, in turn, assign the request to the appropriate office for action within 60 days. In each instance, receipt of the request will be acknowledged in writing immediately by the office that has been assigned action. A request for classification review must reasonably describe the document.

(b) Whenever a request is deficient in its description of the record sought, the requester should be asked to provide additional identifying information to the extent possible. Whenever a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken. Upon a determination that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under 5 U.S.C. 552(b) (Freedom of Information Act) or other provision of law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination of the Classification Review Committee, and a notice that such an appeal must be filed with the Foundation within 60 days in order to be considered.

(c) When the request relates to a document given derivative classification by the Foundation, the request and the document will be forwarded to the originator of the source document, and the requestor notified of such referral.

(d) Employees presently cleared for access to classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. Such challenges should be brought to the attention of the Security Officer (Information) who will act thereon within 30 days, informing the challenger of actions taken. Requests for confidentiality will be honored.

**§ 601.8 Access to classified materials.**

No person may be given access to classified information unless that person has been determined to be trustworthy and unless access is necessary for the performance of official duties.

**§ 601.9 Access by historical researchers and former Presidential appointees.**

The requirement in § 601.8 that access to classified information may be granted only as is necessary for the performance of official duties may be waived for persons who are engaged in historical research projects, or previously have occupied policymaking positions to which they were appointed by the President, provided they execute written agreements to safeguard the information and written consent to the Foundation's review of their notes and manuscripts solely for the purpose of determining that no classified information is disclosed. A precondition to any such access is the favorable completion of an appropriate investigative inquiry.

**PART 602—EXEMPTION OF CERTAIN FINANCIAL INTERESTS**

Sec.

602.1 Rule.

602.2 Applicability.

602.3 Support services for performance of National Science Board tasks and responsibilities.

**AUTHORITY:** 18 U.S.C. 208(b); sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

**§ 602.1 Rule.**

For the purposes of section 208(a) of Title 18, United States Code, the fol-

lowing financial interests of a National Science Foundation employee in an organization which applies for a grant, contract, or other arrangement (the "applicant organization") from the Foundation are hereby determined to be too remote or inconsequential to affect the integrity of such employee when such financial interest consists of employment by or service as officer, director, trustee, or partner (or negotiation for prospective employment, office or partnership) in an organization (the "owning organization") which owns stocks, bonds, notes, or other evidences of financial interest in the applicant organization, the amount of which is:

(a) Less than 5 percent of the total portfolio of investments of the owning organization, and

(b) Less than 5 percent of the total outstanding amounts of the same class or classes of securities or other evidences of financial interest issued by the applicant organization, provided that such holding does not constitute de facto control of the applicant organization.

[39 FR 4664, May 6, 1974]

**§ 602.2 Applicability.**

The rule set forth in § 602.1 shall apply to those financial interests of which the employee has or by virtue of his position in an owning organization should have actual knowledge.

[39 FR 4664, May 6, 1974]

**§ 602.3 Support services for performance of National Science Board tasks and responsibilities.**

With the approval of the Director and the Chairman of the National Science Board and in accordance with other laws and regulations, the Foundation may contract with the home institution of a Member of the National Science Board to provide professional, clerical, and administrative services in support of the Member's personal efforts to carry out National Science Board tasks and responsibilities. The institution may receive reimbursement of all allowable costs, but no profit or fee. In such circumstances the Foundation finds that any financial inter-

ests the institution might have are too remote or inconsequential to affect the integrity of the services provided by the National Science Board Member and, therefore, generally exempts them from the operation of section 208(a) and from the formal requirements of section 208(b)(1) of Title 18, United States Code.

[44 FR 19407, Apr. 3, 1979]

**PART 610—PROCEDURES AND CRITERIA FOR RESOLVING QUESTIONS INVOLVING MORAL CHARACTER OR LOYALTY OF APPLICANTS FOR AND HOLDERS OF NATIONAL SCIENCE FOUNDATION FELLOWSHIPS**

Sec.

610.1 Purpose.

610.2 Definitions.

610.3 Separate consideration of professional or academic qualifications and affirmative declaration as to convictions or pending criminal charges and allegations or complaints by third parties.

610.4 Substantive criteria.

610.5 Procedures; Special Review Committee.

610.6 Final decision.

**AUTHORITY:** Sec. 11(a), 64 Stat. 153; 42 U.S.C. 1870.

**SOURCE:** 29 FR 14540, Oct. 23, 1964, unless otherwise noted.

**§ 610.1 Purpose.**

This part establishes procedures and criteria, including an opportunity for a hearing by a Review Board established pursuant to Part 630 of this title, for resolving questions arising as to whether the making or continuation of a National Science Foundation Fellowship award would not be in the best interests of the United States on grounds involving the moral character or loyalty of the applicant for, or holder of, such fellowship.

**§ 610.2 Definitions.**

(a) "Special Review Committee" (also referred to as "Committee") means a body composed of the following Foundation officials: The Deputy Director, as chairman, the Associate Director (Scientific Personnel and Education) and the General Counsel, together with such additional persons, if any, from sources within or outside

the Foundation as may be designated from time to time by the Director.

(b) "Act" means the National Science Foundation Act of 1950, as amended (42 U.S.C. §§ 1861-1875).

(c) "Fellowship" (also referred to as "Review Board" refer to the Panel and Foundation to an individual under section 10 of the Act.

(d) The terms "Review Panel" and "Review board" refer to the Panel and Board defined in the regulations contained in Part 630 of this chapter.

(e) "Director" means the Director of the National Science Foundation.

(f) "Oath or affirmation of allegiance" means the oath or affirmation required under section 16(d)(1) of the Act.

**§ 610.3 Separate consideration of professional or academic qualifications and affirmative declaration as to convictions or pending criminal charges and allegations or complaints by third parties.**

In order that objectivity may be maintained in the selection of candidates (and in any decisions as to termination of a fellowship) on the basis of scholarly achievement and potential, no advisory group or panel involved in making any recommendations as to the selection of persons for Fellowships, or in the making of any recommendations as to their retention as such Fellows, will be made aware of any affirmative or negative criminal declarations made pursuant to section 16(d)(1)(B) of the Act, nor of any other information (such as third-party allegations) other than that developed in connection with the submission and processing of the application for academic considerations.

**§ 610.4 Substantive criteria.**

(a) A Fellowship award will be denied or discontinued where: (1) The oath or affirmation of allegiance was not taken or cannot be taken in good faith; or (2) there is (i) a conviction of a crime involving moral turpitude, or (ii) conduct involving moral turpitude, unless in either case it is established that the applicant or fellowship holder is, nevertheless, now a person of good moral character.



## § 610.5

(b) These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make it desirable.

### § 610.5 Procedures; Special Review Committee.

(a) Affirmative declarations made pursuant to section 16(d)(1)(B) of the Act or allegations and complaints by third parties pertaining to any individual who is the holder of a Fellowship or who has been tentatively selected for such a fellowship on the basis of academic consideration shall be referred to a Special Review Committee. This Committee will make recommendations to the Director as to whether there is substantial reason (pertaining to the moral character or loyalty of the individual concerned in accordance with § 610.4) for a belief that the making or continuation of the award would not be in the best interests of the United States. The Committee may supplement the information referred to it by such correspondence, personal interviews or other informal methods as may be necessary in order to make the aforementioned determination.

(b) If, after review of the recommendations of the Special Review Committee, the Director is of the opinion that there is substantial reason (pertaining to the moral character or loyalty of the individual concerned in accordance with § 610.4) for a belief that the making or continuation of the award would not be in the best interests of the United States, such individual shall be advised by written notice that a question or questions have arisen involving moral character or loyalty, and that upon request he will be afforded a hearing thereon in accordance with Foundation regulations. A copy of the regulations under this part and a copy of Part 630 of this chapter shall be enclosed with the notice, which shall, in addition, (1) set forth, in as much detail and as specifically as considerations of security may permit, the information raising the questions pertaining to moral character or loyalty and (2) advise that unless a request for a hearing is made within twenty days of the mailing of such notice, the matter will be referred to the National

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Science Board for a determination as to whether the fellowship should be denied or discontinued. If a hearing is requested, the case will be submitted by the Director to the Chairman of the Review Panel for handling in accordance with the regulations set forth in Part 630 of this chapter. The National Science Foundation is deemed to be the "constituent agency" within the meaning of § 630.2(e) of this chapter. "Applicable criteria" as defined in § 630.2(j) of this chapter refers to those set forth in § 610.4 and to manual or other issuances of the National Science Foundation pertaining to denial or discontinuance of fellowship awards on grounds involving moral character or loyalty.

### § 610.6 Final decision.

The initial decision of a Review Board shall be forwarded by the Director to the National Science Board, which shall then consider it and take such action thereon as it shall deem to be appropriate.

## PART 611—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

### Sec.

- 611.1 Purpose.
- 611.2 Application of part.
- 611.3 Discrimination prohibited.
- 611.4 Assurances required.
- 611.5 Illustrative applications.
- 611.6 Compliance information.
- 611.7 Conduct of investigations.
- 611.8 Procedure for effecting compliance.
- 611.9 Hearings.
- 611.10 Decisions and notices.
- 611.11 Judicial review.
- 611.12 Effect on other regulations; forms and instructions.
- 611.13 Definitions.

### APPENDIX A

AUTHORITY: Secs. 11, 602, 64 Stat. 153, 78 Stat. 252; 42 U.S.C. 1870, 2000d-1.

SOURCE: 29 FR 16305, Dec. 4, 1964, unless otherwise noted.

### § 611.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the



Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Science Foundation.

#### § 611.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Foundation, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contract, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 611.3. The fact that a program or activity is not listed in the Appendix shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

#### § 611.3 Discrimination prohibited.

(a) *General.* No person in the United States, shall, on grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contrac-

tual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program of an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objec-

tives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other

arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training or (ii) to provide work experience which contributes to the education or training of such individuals.

(2) Programs listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons, including research associates, where in training for the same or related employments, have one of the above purposes as a primary purpose.

(3) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(4) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(3) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with para-

graph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

#### § 611.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal Financial assistance is extended pursuant to the application. The responsible Foundation official shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, struc-

tures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Foundation to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Foundation official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Foundation official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2.)

(b) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school



system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance the responsible Official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(c) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Foundation official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any

such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

#### § 611.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the programs of the Foundation. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

1. In programs for support to elementary or secondary schools such as for the acquisition of equipment discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

2. In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Foundation official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

3. In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution, discrimination is prohibited with respect to any educational activity, any provision of medical or other services and any financial aid to individuals incident to the program.

4. In grant programs to assist in the construction of facilities for research or for the provision of educational services, assurances



will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

5. Upon transfers of real or personal property for research or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

6. In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 611.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals which will insure that groups previously subjected to discrimination are adequately served but not the establishment of discriminatory qualifications for participation in any program.

7. Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

#### § 611.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Foundation official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Foundation official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Foundation official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Foundation official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Foundation official finds necessary to apprise such persons of the protections against dis-

crimination assured them by the Act and this part.

**§ 611.7 Conduct of investigations.**

(a) *Periodic compliance reviews.* The responsible Foundation official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Foundation official a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Foundation official.

(c) *Investigations.* The responsible Foundation official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this regulation, the responsible Foundation official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 611.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Foundation official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering

with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

**§ 611.8 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 611.4.* If an applicant fails or refuses to furnish an assurance required under § 611.4 or otherwise fails to comply with that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Foundation shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such subsection, except that the Foundation shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or con-

tinue Federal financial assistance shall become effective until (1) the responsible Foundation official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearings, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Director and the National Science Board pursuant to § 611.10(e) and (4) the expiration of thirty days after the Director has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Foundation official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least ten days from the mailing of such notice to the recipient or other person. During this period of at least ten days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

#### § 611.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 611.8(b), reasonable notice shall be given by registered or certified mail, return receipt request-

ed, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than twenty days after the date of such notice within which the applicant or recipient may request of the responsible Foundation official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 611.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Foundation in Washington, D.C., at a time fixed by the responsible Foundation official unless he determines that the convenience of the applicant or recipient or of the Foundation requires that another place be selected. Hearings shall be held before the responsible Foundation official or, at the discretion of the Director, a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Foundation shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing,



giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Foundation and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 611.10.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.10 Decisions and notices.

(a) *Decision by a person or persons other than the responsible Foundation official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the responsible Foundation official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Foundation official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Foundation official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Foundation official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Foundation official.

(b) *Decisions on record or review by the responsible Foundation official.* Whenever, after hearing, a record is certified to the responsible Foundation official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Foundation official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Foundation official shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 611.9(a), a decision shall be made by the responsible Foundation official on the record and a copy of such decision shall be given



in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer, panel, or responsible Foundation official shall set forth the ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director and National Science Board.* Any final decision of a responsible Foundation official (other than the Director) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Director who may approve such decision, may vacate it, or remit or mitigate any sanction imposed. In the event that the imposition of a sanction is considered appropriate by the Director, such decision will be forwarded to the National Science Board for approval before any sanction is imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Foundation official that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation

and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Foundation official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Foundation official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Foundation official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Foundation official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

#### § 611.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

#### § 611.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Foundation which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal

financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 and regulation issued thereunder, or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Foundation official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Director may from time to time assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 611.10), including the achievement of effective coordination and maximum uniformity within the Foundation and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

[29 FR 16305, Dec. 4, 1964, as amended at 38 FR 17985, July 5, 1973]

§ 611.13 Definitions.

As used in this part:

(a) The term "Foundation" means the National Science Foundation, and includes each of its organizational units.

(b) The term "Director" means the Director of the National Science Foundation.

(c) The term "responsible Foundation official" with respect to any program receiving Federal financial assistance means the Director or other official of the Foundation designated by the Director.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or the donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity involving the provision of services, financial aid, or other benefits to individuals (including education or training, health, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provi-

sion of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Foundation official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

## APPENDIX A

Statutory Provisions under which the National Science Foundation provides Federal financial assistance:

The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875).

Title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876-1879).

The National Sea Grant College and Program Act of 1966 (80 Stat. 998).<sup>1</sup>

[38 FR 17986, July 5, 1973]

## PART 612—AVAILABILITY OF RECORDS AND INFORMATION

### Sec.

- 612.1 Scope.
- 612.2 Information policy.
- 612.3 Procedures applicable to the public—requests and appeals.
- 612.4 Copies of records.
- 612.5 Creation of records.
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- 612.7 Agency actions on receipt of a properly presented request for record.
- 612.8 Records available.
- 612.9 Records not available.
- 612.10 Records and reports on requests for information.

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502.

SOURCE: 40 FR 12793, Mar. 21, 1975, unless otherwise noted.

### § 612.1 Scope.

This part establishes procedures for the National Science Foundation (NSF) to implement the provisions of the Administrative Procedure Act (5 U.S.C. 552(a)) relating to the availability to the public of records of NSF.

### § 612.2 Information policy.

(a) It is the policy of NSF to make the fullest possible disclosure of information to any person who requests information, without unnecessary expense or delay. The Deputy Director, NSF, may, in particular instances except where prohibited by law, order disclosure in the public interest of records exempt from mandatory disclosure under § 612.9 of this regulation.

<sup>1</sup>All the above programs listed are conducted pursuant to authority contained in the National Science Foundation Act of 1950, as amended, 42 U.S.C. 1861-1875.



(b) A collection of NSF policy documents, staff instructions, and of agency opinions and orders in the adjudication of cases, with respective indices, shall be physically located in the National Science Foundation library at 1800 G Street, NW., Washington, D.C. where they will be available for inspection by the public during regular working hours on Monday through Friday. Copies of such documents shall be furnished in accordance with these regulations.

(c) The Assistant Director for Administrative Operations (AD/AO) shall be responsible for maintaining, publishing, distributing and making available for inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2). Such indexes shall promptly be published, quarterly or more frequently, unless the ADAO determines by order published in the *FEDERAL REGISTER* that the publication would be unnecessary. The fee for furnishing copies of indexes and supplements shall not exceed the direct cost of duplication.

#### § 612.3 Procedures applicable to the public—requests and appeals.

(a) *Publications excluded.* For the purpose of public requests for records the term "record" does not include publications which are available to the public in the *FEDERAL REGISTER*, or by sale or free distribution. Such publications may be obtained from the Government Printing Office, the National Technical Information Service, the NSF Distribution Section or NSF grantees or contractors. Requests for such publications will be referred to or the requester informed of the appropriate source. The booklet, *Publications of the National Science Foundation*, which is available without charge from the Central Processing Section, National Science Foundation, Washington, D.C. 20550, identifies Annual Reports, Descriptive Brochures, Program Announcements, Science Resources Studies, Special Studies, and Periodicals descriptive of Foundation activities, policies, and procedures, sets forth the cost of each, and tells how copies may be obtained.

(b) *Form of request.* A request need not be in any particular format, but it (1) must be in writing, (2) must be clearly identified both on the envelope and in the letter as a Freedom of Information Act or FOIA request, (3) must describe the records sought with sufficient specificity to permit identification, and (4) must state that the requester promptly will pay the fees chargeable under this regulation. Provided however, That when the requester places an inadequate limit on the amount he will pay or the requester has failed to make payment for previous requests, the notice of determination whether or not to comply with the request will be furnished within ten days as provided in § 612.7 of this regulation but no copies will be furnished until appropriate payment is received.

(c) *Place of request.* Any request for a record under FOIA shall be addressed to the National Science Foundation, Public Information Office, 1800 G Street, NW., Washington, D.C. 20550. A request which meets the requirements of subsection (a) above and is properly addressed shall be deemed received on the date of arrival in the NSF mailroom. Since NSF liaison offices located outside of Washington, D.C. maintain no permanent records, any request received by such offices will be returned to the requester with instructions for submission as provided herein.

(d) *Time for appeal.* A person whose request has been denied or partially denied may initiate an appeal by filing a request for review within ten days of the receipt of the denial, Saturdays, Sundays, legal public holidays, and the date of receipt excluded.

(e) *Form of appeal.* The appeal shall include a copy of the written request and the denial together with any written argument the requester wishes to submit, and shall be signed by the requester.

(f) *To whom appeal is made.* An appeal shall be addressed to the Deputy Director, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

(g) *Decisions on appeal.* Decisions on appeal shall be made by the Deputy Director in writing within 20 days (ex-



cepting the date of receipt, Saturdays, Sundays, and legal public holidays) from receipt of the appeal. If the decision is in favor of the requester it shall order the record made available promptly to the requester. If adverse to the requester in whole or in part it shall briefly state the reasons and notify the requester that he may seek judicial review of the decision pursuant to paragraph (4) of section 552(a), Title 5, United States Code. Before final denial the Deputy Director, acting through the Office of General Counsel, shall consult the Department of Justice concerning the proposed denial.

#### § 612.4 Copies of records.

If it is determined that a requested record may be disclosed, copies will be furnished the requester as promptly as possible provided payment of fees has been arranged for pursuant to § 612.6(a) of this regulation. Copying service shall be limited to not more than two copies of any page, except that additional copies may be made where administrative considerations permit. Records shall not be released for copying by non-NSF personnel.

#### § 612.5 Creation of records.

A record will not be created by compiling selected items from other documents at the request of a member of the public nor will a record be created by analysis, computation or other processing specifically for the requesting party. If such analysis or computation is available in the form of a record, copies shall be made available as provided in this regulation.

#### § 612.6 Fees.

(a) *General.* User fees shall be charged according to the schedule contained in paragraph (b) of this section for services rendered in responding to requests for NSF records under this regulation. Copies shall be furnished without charge or at a reduced charge where it is determined that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall be charged only where they amount to more than \$3.00 in the ag-

gregate for a request or series of related requests. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt.

(b) *Services charged for, and amounts charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges will be assessed:

(1) Copies. For photocopies of documents \$0.10 per copy of each page. Where records are not susceptible to photocopying, e.g., punchcards, magnetic tapes, or oversize materials, the amount charged will be actual cost as determined on a case-by-case basis.

(2) Clerical searches. For each one quarter hour spent by clerical personnel after the first quarter hour, in searching for producing a requested record, \$1.25.

(3) Certification or authentication of true copies—each: \$3.00.

(4) Nonroutine, nonclerical searches. Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, \$3.75.

(5) Examination and related tasks in screening records. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall ordinarily be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy. However, where a broad request requires NSF personnel to devote a substantial amount of time to examining records for the purpose of screening out certain records or portions thereof

in accordance with determinations that material of such a nature is exempt and should be withheld as a matter of sound policy, a fee may be assessed for the time consumed in such examination. Where such examination can be performed by clerical personnel, time will be charged for at the rate of \$1.25 per quarter hour, and where higher level personnel are required, time will be charged for at the rate of \$3.75 per quarter hour.

(6) **Computerized Records.** Fees for services in processing requests maintained in whole or in part in computerized form shall be in accordance with this section so far as practicable. Services of personnel in the nature of a search shall be charged for at rates prescribed in paragraph (c)(4) of this section unless the level of personnel involved permits rates in accordance with paragraph (c)(2) of this section. A charge shall be made for the direct cost of the computer time involved, based upon the prevailing level of costs to governmental organizations and upon the particular types of computer and associated equipments and the amounts of time on such equipments that are utilized. A charge shall also be made for the direct costs of special supplies or materials used to contain, present, or make available the output of the computers. Nothing in this paragraph shall be construed to entitle any person as of right, to any special processing of computerized records such as a reordered listing of or special summaries of file contents.

(c) **Notice of anticipated fees in excess of \$25.** Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated charges. In appropriate cases, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable NSF personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester.

(d) **Form of payment.** Payment should be made by check or money

order payable to the National Science Foundation.

§ 612.7 **Agency actions on receipt of a properly presented request for record.**

(a) **Monitoring of requests.** The NSF Public Information Office (PIO) will serve as central office for internal administration of these regulations. PIO will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve unavoidable extensions, dispatch denial letters, and maintain administrative records.

(b) **Action offices.** Upon assignment of a particular request, the head of the action office shall be responsible to obtain the requested record so that appropriate agency action can be completed within 10 days (excepting the date of receipt, Saturdays, Sundays, and legal public holidays). In a situation where the record may exist only in a retired file which has been placed in storage, the head of the action office shall immediately notify the requester by letter that the record has been ordered from storage and that the time limit for acting on the request is extended by the length of time required to obtain the record, setting forth the date on which a determination is expected to be dispatched. If the request seeks a voluminous amount of separate and distinct records requiring an unusual length of time for search, collection, and appropriate examination, and determination on the request cannot be made within 10 working days after agency receipt, the office head shall within such ten-day period furnish to the requester written notice extending the period for not more than ten working days. This notice shall set forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the record has not been obtained and examined and notice of the determination whether to comply with the request has not been given by the last day of the period as extended, the requester shall be notified on that last day that the request is denied because the record has not yet been found and examined.

Such denial shall state that NSF will reconsider the denial as soon as the search and examination is complete, which should be within a specifically stated number of days, but that the requester may, if he wishes, file an administrative appeal as provided in § 612.3 of this regulation. This same procedure for extending the period shall be followed if the nature of the record requires consultation with another agency having a substantial interest in the determination of the request or requires consultation among two or more components of NSF having substantial subject-matter interest therein.

(c) *Denial of request.* No written request for record shall be denied except by the Director of the Office of Government and Public Programs. Notice of the denial of a request shall briefly set forth the reasons therefor which shall be based solely upon one or more of the exemptions specified in § 612.9 of this regulation. Each notice of denial also shall set forth the names and title or positions of each person responsible for the denial and shall inform the requester of the right to appeal as provided in § 612.3 of the regulation.

(d) *Oral requests.* Nothing in these regulations shall be deemed to preclude NSF from honoring oral requests for information where feasible, but if the requester is dissatisfied with the disposition of such a request, he shall be asked to put the request in writing.

#### § 612.8 Records available.

The following categories of records shall, unless exempted under the provisions of § 612.9, be made available in addition to the policy documents and final opinions and orders in adjudicated cases specified in 5 U.S.C. 552(a) (1) and (2).

(a) *Correspondence.* Correspondence between NSF or any official of NSF and individuals or organizations outside the Federal Government relating to or resulting from the conduct of the official business of the agency.

(b) *Records pertaining to grants and fellowships.* (1) Portions of funded grant applications and other supporting documents submitted by appli-

cants which are not exempt from disclosure under this regulation; (2) Grant award documents; and (3) Portions of funded fellowship applications and other supporting documents submitted by applicants, the disclosure of which would not constitute a clearly unwarranted invasion of personal privacy.

(c) *Contracts.* (1) Contract instruments, (2) Portions of offers reflecting final prices submitted in negotiated procurements.

(d) *Reports on grantee or contractor performance.* Final reports of audits, surveys, reviews, or evaluations by, for, or on behalf of NSF or performance by any grantee or contractor under any NSF financed or supported program or activity, which reports have been transmitted to the grantee or contractor.

(e) *Reports and other items prepared by grantees and contractors.* The final report of a grantee or contractor of the performance under any grant or contract. To the extent that NSF has taken delivery of other items produced in connection with grants and contracts, such as films, computer software, other copyrightable materials and reports of inventions, such materials will be made available except that considerations relating to obtaining copyright and patent protection may require delay in disclosure for such period as necessary to accomplish such protection. Release of records which are copyrightable or which disclose patentable inventions shall not confer upon the requester any license or other interest in the subject matter or the expression thereof.

#### § 612.9 Records not available.

(a) *Exemptions.* The following types of records are not normally available for inspection and copying:

(1) Records specifically authorized and in fact properly classified pursuant to Executive Order to be kept secret in the interest of national defense or foreign policy.

(2) Records related solely to the internal personnel rules and practices of NSF. This exemption does not apply to rules relating to the work hours, leave, and working conditions of NSF



personnel, or similar matters, to the extent that they can be disclosed without harm to the functions to which they pertain. Examples of exempt records of the type specified in the first sentence of this paragraph include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NSF auditors and examiners;

(ii) Negotiating positions and limitations involved in a negotiation prior to the execution of a contract or the completion of the action to which the negotiating positions or limitations were applicable except as they may be exempt pursuant to other provisions of this section.

(iii) Personnel policies, procedures and instructions, internal staffing plans, requirements, authorizations, controls, and supporting data relating to position management and manpower utilization and information involved in the determination of the qualifications of candidates for employment or advancement.

(3) Records specifically exempted from disclosure by statute such as 18 U.S.C. 1905 which prohibits disclosure of information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. Matter subject to this exemption is that which is customarily held in confidence by the originator without regard to whether or not the originator is, or is not employed by, a non-profit organization. It includes, but is not limited to:

(i) Information received in confidence, such as grant applications, fellowship applications and research proposals prior to award;

(ii) Statistical data or information if received in confidence from a contractor or potential contractor concerning contract performance, income, profits, losses, and expenditures.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NSF. To the extent not so available by law, examples include, but are not limited to:

(i) Reports, memoranda, correspondence, workpapers, minutes of meetings (other than those governed by the Federal Advisory Committee Act), and staff papers prepared for use within NSF or within the Executive Branch of the Government by personnel and consultants of NSF, or any Government agency.

(ii) Advance information on proposed NSF plans to procure, lease, or otherwise acquire, or dispose of materials, real estate, facilities, services or functions, when such information would provide undue or unfair competitive advantage to any person;

(iii) Records prepared for use in proceedings before any Federal or State court or administrative body;

(iv) Evaluations of and comments on specific grant applications, research proposals, or potential contractors, whether made by NSF personnel or by external reviewers acting either individually or in committees;

(v) Preliminary, draft unapproved recommendations, evaluations, and opinions, such as evaluations of invention disclosures, of research projects, and of incomplete studies conducted or supported by NSF;

(vi) Proposed budget requests and supporting projections used or arising in the preparation and/or execution of a budget; proposed annual and multi-year policy, priorities, program and financial plan and supporting papers.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Information in such files which is not otherwise exempt from disclosure pursuant to other provisions of this section will be released to the subject or to his designated legal representative, and it may be disclosed to others with his written consent. Examples of personnel files exempt from disclosure include, but are not limited to, file containing reports, records and other materials pertaining to individual cases in which disciplinary or other adminis-



trative action has been or may be taken. Similar files include reports and evaluations which reflect upon the qualifications or competence of individuals. Opinions and orders resulting from those proceedings shall be disclosed without identifying details if used, cited, or relied upon as precedent.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Matters contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of any government agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(10) Records belonging to another government agency or dealing with subject matter as to which government agency, other than NSF, has exclusive or primary responsibility. Requests for such records shall be promptly forwarded to the appropriate government agency for disposition or for guidance with respect to disposition.

(b) *Deletion of exempt portion and identifying details.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Whenever any final opinion, order, or other materials required to be made available relates to a private party or parties and the release of the name or names

or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

#### § 612.10 Records and reports on requests for information.

The Director of the Office of Government and Public Programs will be responsible for maintaining a record of denials of written requests for information. On or before March 1 of each year, OGPP shall prepare and submit it to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress a report concerning requests received during the preceding calendar year. The report shall include: (1) The number of determinations made not to comply with requests for records and the reasons for each such determination; (2) the number of appeals made, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; (3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each; (4) the results of each court order which requires the production of a record, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken; (5) a copy of every rule made by NSF regarding this section; (6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and (7) such other information as indicates efforts to administer fully the provisions of 5 U.S.C. 502.

# **PART 613—PRIVACY ACT REGULATIONS**

Sec.

613.1 Purpose and scope.

613.2 Procedures for notification of existence of records pertaining to individuals.

613.3 Procedures for requests for access to or disclosure of records pertaining to an individual.

613.4 Correction of records.

613.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

613.6 Exemptions.

AUTHORITY: 5 USC 552a(f).

SOURCE: 40 FR 44510, Sept. 26, 1975, unless otherwise noted.

## **§ 613.1 Purpose and scope.**

This part sets forth the National Science Foundation procedures under the Privacy Act of 1974 as required by 5 USC 552a(f). Internal guidance for NSF staff and other regulations implementing the Privacy Act are contained or will be contained in NSF Circulars.

## **§ 613.2 Procedures for notification of existence of records pertaining to individuals.**

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by the National Science Foundation are listed annually in the FEDERAL REGISTER as required by that Act. Any person who wishes to know whether a system of records contains a record pertaining to him may either appear in person at the NSF Management Analysis Office at 1800 G St., NW., Washington, D.C. 20550, on work days between the hours of 8:30 a.m. and 5:00 p.m. or may write to the NSF Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, D.C. 20550, it is recommended that requests be made in writing, since in many cases it will take several days to ascertain whether a record exists.

(b) Requests for notification of the existence of a record should specifically identify the system of records involved and should state, if the requester is other than the individual to whom the record pertains, the relationship of the requester to that individual. (Note that requests will not be

honored by the Foundation pursuant to the Privacy Act unless made (1) by the individual to whom the record pertains, (2) by such individual's parent if the individual is a minor, or (3) by such individual's legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction). In cases where the NSF Notice of the System appearing in the FEDERAL REGISTER states that the system location is decentralized the special instruction in such notice pertaining to "Notification" and "Access" and "Content" must be followed.

(c) The Foundation will attempt to respond to a request as to whether a record exists within 10 working days from the time it receives the request or from the time any required identification is established, whichever is later.

## **§ 613.3 Procedures for requests for access to or disclosure of records pertaining to an individual.**

(a) Any person may request review of records pertaining to him by appearing at the NSF Management Analysis Office at 1800 G Street, NW., Washington, D.C. on work days between the hours of 8:30 a.m. and 5:00 p.m. or by writing to the NSF Privacy Act Officer, Assistant Director for Administration, NSF, Washington, D.C. 20550. (See (b) and (c), below, for identification requirements.) The request should specifically identify the systems of records involved, and the request should include any special information specified in the notice of the system under "Notification" and "Access and Contest." The Foundation will strive either to make the record available within 15 working days of the request or to inform the requester of the need for additional identification or the tendering of fees (as specified in § 613.4(e)) within 15 working days; except that if the request for access was not preceded by a notification request as provided in § 613.2, then the 15-day period shall not begin until after such time as it has been determined that the record exists.

(b) In the case of persons making requests by appearing at the Foundation the amount of personal identification required will of necessity vary with the sensitivity of the record involved. Except as indicated below reasonable identification such as employment identification cards, drivers licenses, credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary. Records in the following systems of records, however, are considered to contain relatively sensitive and/or detailed personal information—

Employment Inquiries and Background Information;  
Applicants to Committee on the Challenges and Modern Society Fellowship Program (NATO);  
Confidential Statements of Employment and Financial Interests;  
Congressional Contact Files;  
Doctorate Records File;  
Earnings and Tax Statements;  
Employee Grievance and Appeals File;  
Employee Payroll Jackets;  
Equal Employment Opportunity Case File;  
Fellowship and Traineeship Filing System;  
Grants to Individuals;  
Health Service Medical Records;  
Intergovernmental Personnel Act Assignment Agreements;  
Manpower Management Subsystem;  
Medical Examination Records for Service in Antarctica;  
Minority Applicants for Employment;  
Nominees for and Recipients of the National Medal of Science;  
NSF Payroll System;  
Official Passports;  
Official Personnel Folders;  
Presidential Internships in Science and Engineering;  
Science Education Participant Information Subsystem;  
Separated Employees Service Record (SF7);  
Student Science Training Program Participant Information;  
Time and Attendance Reports;  
U.S. Antarctic Research Program Personal Information;  
U.S. Antarctic Research Program Field Participants;  
Alien Applications for Consideration of Waiver of Two-Year Foreign Residence Requirements—NSF;  
Reviewer/Panelist Information Subsystem; and  
Nominees for and Recipients of the Alan T. Waterman Award Nomination File.

Accordingly, with respect to requests for records in these systems the Founda-

tion reserves the right to require sufficient identification to identify positively the individual making the request. This might involve independent verification by the Foundation as by phone calls to determine whether an individual has made a request, personal identification by Foundation employees who know the individual, or such other means as are considered appropriate under the circumstances.

(c) A written request will be honored only if it contains the following certification before a duly commissioned notary public of any state or territory (or similar official if the request is made outside the United States):

I, \_\_\_\_\_, do hereby certify that I am the individual about whom the record requested in this letter pertains or that I am within the class of persons authorized to act on his behalf in accordance with 5 USC 552a(h).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

In the County of \_\_\_\_\_  
State of \_\_\_\_\_  
On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Name of Individual)

who is personally known to me, did appear before me and sign the above certificate.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

(S) My commission expires \_\_\_\_\_.

However, where the record requested is contained in any of the systems of records listed in paragraph (b) of this section, the Foundation reserves the right to require additional identification and/or to independently verify to its satisfaction the identity of the requester.

(d) Charges for copies of records will be at the rate of \$0.10 per photocopy of each page. Where records are not susceptible to photo-copying, e.g., punch cards, magnetic tapes or over-size materials, the amount charged will be actual cost as determined on a case-by-case basis. Only one copy of



each record requested will be supplied. No charge will be made unless the charge as computed above would exceed \$3.00 for each request or related series of requests. If a fee in excess of \$25.00 would be required, the requester shall be notified and the fee must be tendered before the records will be copied.

(e) The procedures of paragraphs (a)–(d) of this section shall also apply to requests made pursuant to 5 U.S.C. 552a(c)(3) that accountings made under 5 U.S.C. 552a(c)(1) be made available.

[40 FR 44510, Sept. 26, 1975, as amended at 42 FR 8639, Feb. 11, 1977]

§ 613.4 Correction of records.

(a) Any individual is entitled to request amendments of records pertaining to him pursuant to 5 U.S.C. 552a(d)(2). Such a request shall be made in writing and addressed to the Privacy Act Officer, Assistant Director for Administration, National Science Foundation, Washington, D.C. 20550.

(b) The request should specify the record and systems of records involved, and should specify the exact correction desired and state that the request is made pursuant to the Privacy Act. An edited copy of the record showing the desired correction is desirable. Within 10 working days of the receipt of a properly addressed request (or within 10 working days of the time the Privacy Act Officer becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act), the Privacy Act Officer shall acknowledge receipt of the request.

(c) The Privacy Act Officer upon the receipt of such a request shall promptly confer with the Directorate or office within the Foundation responsible for the record. In the event it is felt that correction is not warranted in whole or in part, the matter shall be brought to the attention of the General Counsel. If, after review by the General Counsel and discussion with the requester if deemed helpful, it is determined that correction as requested is not warranted, a letter shall be sent by the Privacy Act Officer to the requester denying his request and/or

explaining what correction might be made if agreeable to the requester. This letter shall set forth the reasons for the refusal to honor the request for correction. It shall also inform him of his right to appeal this decision and include a description of the appeals procedure set forth in paragraph (d), of this section. Such letter or notification that the desired correction will be made shall normally be sent within 30 working days of the receipt of a properly addressed request (or within 30 working days of the time the Privacy Act Officer becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act).

(d) An appeal may be taken from an adverse determination under paragraph (c) of this section, to the Deputy Director of the Foundation. Such appeal must be made in writing and should clearly indicate that it is an appeal. The basis for the appeal should be included, and it should be mailed to the same address as listed in paragraph (a) of this section. A hearing at the Foundation may be requested. Such hearing will be informal, and shall be before the Deputy Director or his designee. If no hearing is requested, the request for appeal should include the basis for the appeal. Where no hearing is requested the Deputy Director shall render his decision within thirty working days after receipt of the written appeal at the Foundation unless the Director, for good cause shown, extends the 30-day period and the appellant is advised in writing of such extension. If a hearing is requested, then the Foundation will attempt to contact the appellant within five working days and arrange a suitable time for the hearing. In such case the decision of the Deputy Director shall be made within 30 working days after the hearing unless the time is extended and the appellant is advised in writing of such extension.

(e) The final decision of the Deputy Director in an appeal shall be in writing and, if adverse to the appellant, set forth the reasons for the refusal to amend the record and advise him of his right to appeal the decision under 5 U.S.C. 552a(g)(1)(A). The individual



shall also be notified that he has the right to file with the Foundation a concise statement setting forth the reasons for his disagreement with the refusal of the Foundation to amend his record.

[40 FR 44510, Sept. 26, 1975, as amended at 42 FR 8639, Feb. 11, 1977]

**§ 613.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.**

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records required to be made available by the Freedom of Information Act will be released in response to a request formulated in accordance with NSF regulations found at 45 CFR Part 612.

(b) Records not required by the Freedom of Information Act to be released may be released, at the discretion of the Foundation, if the written consent of the individual to whom they pertain has been obtained or if such release would be authorized under 5 USC 552a(b)(1) or (3)-(11).

**§ 613.6 Exemptions.**

(a) *Fellowships.* Pursuant to 5 USC 552a(k)(5), the Foundation hereby exempts from the application of 5 USC 552a(d) any materials which would disclose the identity of references of fellowship applicants contained in any of the following systems of records: (1) Fellowship and Traineeship Filing System and (2) Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO).

(b) *Applicants for Employment.* Pursuant to 5 USC 552a(k)(5), the Foundation hereby exempts from the application of 5 USC 552a(d) any materials which would disclose the identity of references of applicants for employment at NSF contained in the system of records entitled "Official Personnel Folders."

**PART 614—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS OF THE NATIONAL SCIENCE BOARD**

Sec.

614.1 General rule.

614.2 Grounds for closing meetings.

614.3 Materials relating to closed portions of meetings.

614.4 Opening of transcript or recording.

614.5 Public announcement.

614.6 Meeting changes.

614.7 Record vote.

614.8 Application to Board Executive Committee.

**AUTHORITY:** Government in the Sunshine Act, sec. 552b of Title 5, United States Code; 90 Stat. 1241.

**SOURCE:** 42 FR 14719, Mar. 16, 1977, unless otherwise noted.

**§ 614.1 General rule.**

Except as otherwise provided in these regulations, every portion of every meeting of the National Science Board will be open to public observation.

**§ 614.2 Grounds for closing meetings.**

(a) The National Science Board may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Science Foundation;

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Is likely to involve accusing any person of a crime, or formally censuring any person;

(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(c)(7);

(8) Is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Is likely to disclose information, the premature disclosure of which would:

(i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed Foundation action, unless the Foundation has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the Foundation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the Board close it to the public for any reason referred to in paragraphs (a) (5), (6), or (7) of this section. The request should be addressed to the National Science Board, National Science Foundation, Washington, D.C. 20550. It will be circulated to Members of the Board if received at least three full days before the meeting, and on motion of any Member the Board will determine by record vote whether to

close the affected portion of the meeting.

#### § 614.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the National Science Board are closed to the public under § 614.2:

(a) The General Counsel of the National Science Foundation shall publicly certify that, in his opinion, that portion or portions may properly be closed to the public. The certificate shall state the exemptions under 5 U.S.C. 552b(c) that make the closings proper.

(b) The presiding officer of the meeting (usually the Chairman of the Board) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The Board shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The National Science Board Office shall maintain the General Counsel's certificate, the presiding officer's statement, and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the Board completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

#### § 614.4 Opening of transcript or recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place.

(b) Informal requests to inspect or copy the transcript or electronic recording of a closed session may be made to the staff of the National Science Board and will be handled informally and expeditiously. Written requests to inspect or copy such a transcript or recording that cite the Freedom of Information Act or the Sunshine Act will be treated as formal requests made under the Freedom of Information Act. They will be handled

under the Foundation's Freedom of Information procedures described in 45 CFR Part 612. The exemptions of these Sunshine Act regulations, 45 CFR 614.2, will govern, however, in determining what portions of the transcript or recording may be withheld.

(c) A request to inspect or copy a transcript or electronic recording should specify the date of the meeting and the agenda item or items to which the request pertains. It should contain a promise to pay the costs of any duplication requested.

(d) No search or transcription fees will be charged. Duplication fees may be charged as provided in 45 CFR 612.6.

[42 FR 55619, Oct. 18, 1977]

#### § 614.5 Public announcement.

(a) Except as provided in paragraphs (c) and (d) of this section, the National Science Board will make a public announcement of each Board meeting at least one week before the meeting takes place.

The announcement will cover: (1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and telephone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly posted on public notice boards at the National Science Foundation and made available to journals of general scientific interest. Immediately following the issuance of such an announcement, it will be submitted for publication in the *FEDERAL REGISTER*.

(c) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the Board by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) an announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the Board by record vote determines that the announcement would disclose information which should be withheld under the same

standards as apply for closing meetings under § 614.2.

#### § 614.6 Meeting changes.

(a) The time or place of a meeting of the National Science Board that has been publicly announced as provided in § 614.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the Board that has been publicly announced as provided in § 614.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when:

(1) The Board determines by record vote that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member on the change at the earliest practicable time.

#### § 614.7 Record vote.

(a) For purposes of this part a vote of the National Science Board is a "record vote" if: (1) It carries by a majority of all those holding office as Board Members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the Board Office will make publicly available a written record showing the vote of each Member on the question.

(c) Within one day of any record vote under which any portion or portions of a Board meeting are to be closed to the public, the Board Office will make available a full written explanation of the Board's action and a list of all persons expected to attend the meeting, showing their affiliations.

**§ 614.8 Application to Board Executive Committee.**

All the provisions of this part applicable to the National Science Board shall apply equally to the Executive Committee of the Board whenever the Executive Committee is meeting pursuant to its authority to act on behalf of the Board.

**PART 630—FELLOWSHIP REVIEW PANEL**

Sec.

630.1 Purpose.

630.2 Definitions.

630.3 Fellowship Review Panel; Fellowship Review Board; in general.

630.4 Procedural safeguards.

630.5 Hearing before Fellowship Review Board or a Hearing Officer.

630.6 Preliminary decision; initial decision; final action.

630.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.

**AUTHORITY:** Sec. 11(a), 64 Stat. 153; 42 U.S.C. 1870.

**SOURCE:** 29 FR 14540, Oct. 23, 1964, unless otherwise noted.

**§ 630.1 Purpose.**

This part established a Fellowship Review Panel, from which Fellowship Review Boards will be selected, for the purpose of providing hearings where an opportunity for such hearing is provided for in applicable procedures of the Foundation, in cases where the Director has found substantial reason for a belief that a fellowship award should be denied or discontinued, on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of, the award.

**§ 630.2 Definitions.**

(a) "Fellowship Review Panel" (also referred to as "Panel") means a panel of from nine to twelve members selected by the Director, with the approval of the National Science Board, for such terms as may be designated by him, which shall include at least four representatives of the legal discipline and at least four representatives of the field of higher education. At least eight members of the Panel shall be

selected from sources outside the Foundation.

(b) "Panel Chairman" means one of the panel members designated by the Director, with the approval of the National Science Board, to serve as Chairman of the Panel for such time as shall be indicated in the designation.

(c) "Fellowship Review Board" means not less than three members of the Panel designated by the Panel Chairman for the consideration of one or more cases submitted by the Director. At least two Fellowship Review Board members shall be persons other than employees of the Foundation, and the Fellowship Review Board shall include at least one representative of the legal discipline and one from the field of higher education. In no event shall anyone who participated in any previous consideration of a case be eligible to serve on a board in connection with its consideration of that case. The Panel Chairman may designate himself as one of the members of a Fellowship Review Board or as the Chairman thereof.

(d) "Fellowship Review Board Chairman" means a member of a Fellowship Review Board who has been designated as Chairman of such Board by the Panel Chairman.

(e) "Foundation" means the National Science Foundation.

(f) "Submission" means a referral (of an individual's request for a hearing) by the Director pursuant to § 610.5 of this chapter.

(g) "Preliminary decision" means the recommended decision, including findings of fact and conclusions reached in the light of the applicable criteria, prepared by a Hearing Officer and submitted to the Fellowship Review Board.

(h) "Initial decision" means the recommended decision of the Fellowship Review Board, which shall include (1) findings of fact and conclusion reached in the light of the applicable criteria and when applicable, (2) the reasons for any changes or modifications made by the Fellowship Review Board in a preliminary decision.

(i) "Director" means the Director of the National Science Foundation.



(j) "Applicable criteria" means those set forth in § 610.4 of this chapter, or in manual or other issuances of the Foundation pertaining to denial or discontinuance of fellowship or scholarship awards on grounds involving moral character or loyalty.

**§ 630.3 Fellowship Review Panel; Fellowship Review Board; in general.**

Upon receipt of a submission from the Director, the Chairman of the Fellowship Review Panel shall refer the case to a Fellowship Review Board, constituted as provided in § 630.2(c), for the purpose of recommending to the Director and the National Science Board, on the basis of a preponderance of the evidence, after affording to the individual concerned an opportunity for a fair hearing, whether the fellowship or scholarship award should be denied or discontinued by the Foundation on grounds involving, in accordance with applicable criteria, the moral character or loyalty of the applicant for, or holder of the award. The Fellowship Review Board's recommendation shall be embodied in an initial decision in accordance with § 630.2(h).

**§ 630.4 Procedural safeguards.**

The Fellowship Review Board shall take appropriate steps to afford the individual concerned an opportunity for a fair hearing, which shall include provisions designed to assure to such individual the following:

(a) Sufficient notice of the issues to be considered;

(b) An opportunity to be represented by counsel;

(c) Disclosure of as much of all matters of an evidentiary nature as may be permitted within the framework of applicable laws, regulations, and other requirements (e.g., those pertaining to FBI reports);

(d) An opportunity to appear in person (and to present witnesses in his behalf) or, at the option of the individual concerned, to submit his case in whole or in part in writing (e.g., through interrogatories, affidavits, exhibits, etc.);

(e) An opportunity to cross-examine persons either orally or through written interrogatories, to the extent pro-

vided by Executive Order 10865 of February 20, 1960 (relating to safeguarding of classified information within industry);

(f) An option to the individual concerned to have the hearing open or closed to the public;

(g) A determination of the place of the hearing which takes into consideration the convenience of the individual concerned and any witnesses who might be testifying at the hearing.

**§ 630.5 Hearing before Fellowship Review Board or a Hearing Officer.**

The hearing may be conducted, as determined by the Chairman of the Fellowship Review Board, before the full Fellowship Review Board as the hearing body, or before a Hearing Officer. The Hearing Officer may be (a) one of the members of the Fellowship Review Board or (b) a nonmember who is qualified as a Hearing Officer under the Administrative Procedure Act.

**§ 630.6 Preliminary decision; initial decision; final action.**

When the hearing is conducted by the Fellowship Review Board itself, it shall prepare an initial decision for submission to the Director. When the hearing is conducted before a Hearing Officer, the Hearing Officer shall prepare a preliminary decision for submission to the Fellowship Review Board. The preliminary decision shall be reviewed by the Fellowship Review Board and shall become the initial decision of the Fellowship Review Board unless, and to the extent that, it is changed or modified by the Fellowship Review Board. The initial decision of the Fellowship Review Board shall be transmitted to the Director, who shall in turn transmit it to the National Science Board, which shall then consider it and take such final action thereon as it shall deem to be appropriate.

**§ 630.7 Notice to the individual concerned and opportunity to submit comment on preliminary decision and initial decision.**

Copies of the preliminary decision, if any, and of the initial decision shall be

mailed promptly by the Hearing Officer or the Fellowship Review Board, as the case may be, to the individual, or his counsel, with a notice affording him an opportunity to submit written comments thereon, within a specified reasonable time, to the Fellowship Review Board in the case of a preliminary decision, and to the Director in the case of an initial decision.

**PART 635—KEEPING OF RECORDS AND FURNISHING OF REPORTS IN CONNECTION WITH WEATHER MODIFICATION ACTIVITIES**

Sec.

- 635.1 Purpose.
- 635.2 Application of part.
- 635.3 Reporting request.
- 635.4 Maintenance of logs.
- 635.5 Retention of records.
- 635.6 Disclosure of information.

**AUTHORITY:** Sec. 3(a)(3), 82 Stat. 360 and sec. 11(a), 64 Stat. 149, 153; 42 U.S.C. 1870.

**SOURCE:** 30 FR 16202, Dec. 29, 1965, unless otherwise noted.

**§ 635.1 Purpose.**

The purpose of this part is to develop information for use in carrying out study, research and evaluation in the field of weather modification as authorized by the National Science Foundation Act of 1950, as amended, and fostering the interchange of scientific information with respect to weather modification. The information requested under this regulation is not available elsewhere and therefore can only be obtained from individuals and organizations engaged in weather modification activities.

[30 FR 16202, Dec. 29, 1965, as amended at 33 FR 12654, Sept. 6, 1968]

**§ 635.2 Application of part.**

This part applies to any person, and to any organization, whether commercial or nonprofit, engaged in or intending to engage in, any weather modification activity (including research) intended to modify the atmosphere through artificial means. Such activities include, but are not limited to, any of the following:

(a) Intentional seeding of clouds and fog to alter drop size distribution, produce ice crystals, produce coagulation

of droplets, or in any way to influence the natural development cycle of the cloud or its environment by dispersing into it any material or gas such as silver iodide, lead iodide, carbon black, dry ice, ammonia, etc.

(b) Intentional initiation of large heat sources or fires to influence convective circulation or evaporate fog.

(c) Intentional modification of solar radiation exchange of the earth or clouds through the release of gases, dusts, liquids, or aerosols into the atmosphere.

(d) Intentional modification of the energy transfer characteristics of the earth's land or water surface by dusting with powders, liquid sprays, or dyes.

(e) Intentional release of electrically charged particles, radioactive particles or ions into the atmosphere to alter its electrical field pattern or produce localized electrical field anomalies.

(f) Intentional application of shock waves, sonic energy sources, or other explosive or acoustic sources to the atmosphere to influence cloud growth, dissipation, or precipitation patterns.

**§ 635.3 Reporting request.**

(a) *Prior notice.* Each individual or organization intending to engage in any weather modification activity on or after September 1, 1968, is requested when possible to give at least 30 days advance notice to the Foundation of intention to engage in such activity. Please submit such notice on a Foundation report form, copies of which will be made available upon request from the National Science Foundation, Washington, D.C. 20550. When intention to engage in a weather modification activity develops less than 30 days prior to the planned activity, the report should be forwarded to the Foundation by airmail at the earliest possible time.

(b) *Activity reports.* After the weather modification activity reported pursuant to paragraph (a) of this section has commenced, each person or organization engaged in such activity is requested to submit to the Foundation an activity report on field operations on a quarterly basis. Please submit

this report on the form referred to in paragraph (a) of this section.

[30 FR 16202, Dec. 29, 1965, as amended at 33 FR 12654, Sept. 6, 1968]

#### § 635.4 Maintenance of logs.

Each individual or organization engaging in a weather modification activity is requested to maintain a daily log of such activity. The log should contain all relevant facts, including the following:

(a) Daily Log of Ground Weather Modification Activities (including Seeding Releases):

(1) When readily available to project personnel during observational period, description of meteorological situation in target area and control area such as types of clouds, percent cloud cover, temperature, humidity, appearance of lightning, hail, funnel clouds, severe rain, snow and unusual radar patterns should be recorded.

(2) Quantitative measurements of precipitation obtained from nonfederally operated sources such as rain gauges, snow pillows, radar, optical transmissometers and streamflow gauges, in target and control areas.

(3) Any pertinent remarks on unusual results or significant events in the progress of the project should be entered in the log if they would contribute significantly to the technical evaluation of the project.

(4) In the case of the operation of a ground silver iodide generator or other dispenser of particles, aerosols or gases, the daily log should include:

(i) Location of each weather modification device or generator in use.

(ii) Name of individual responsible for turning each weather modification device or generator on or off.

(iii) Time each weather modification device or generator was turned on and turned off.

(iv) Basis or criteria for turning on or off each weather modification device or generator.

(v) Type of material dispersed by each weather modification device or generator.

(vi) Rate of material release of each weather modification device or generator during operation.

(vii) Total material released by each weather modification device or generator during each operational period.

(b) Daily Log of Airborne or Mobile Weather Modification Activities (including Seeding Releases):

(1) Complete log of each aircraft flight or mobile generator run including, but not necessarily limited to, ground track, altitude, air speed, times over check points, release points of seeding or other charges, temperature, average wind direction and speed at release altitude, and, for aircraft, specify type of aircraft, airport or airports used and names of crew members.

(2) All other pertinent information as listed above for ground weather modification activities.

[30 FR 16202, Dec. 29, 1965, as amended at 33 FR 12654, Sept. 6, 1968]

#### § 635.5 Retention of records.

In the interest of assisting scientific research, it is requested that the operating logs and records mentioned in § 635.4 be retained for a period of not less than 5 years and be made available for inspection or reproduction by the National Science Foundation when requested.

[33 FR 12654, Sept. 6, 1968]

#### § 635.6 Disclosure of information.

Information developed as a result of the reporting procedures set forth herein shall be made publicly available on a periodic basis by the Foundation. This information will not include trade secrets or other data required to be kept confidential under section 1905 of Title 18 of the United States Code. Individuals and organizations reporting weather modification activities may request that information which they consider to be included within the scope of 18 U.S.C. 1905 be withheld from public disclosure and the Foundation will grant such requests to the extent permitted by law.

[30 FR 16202, Dec. 29, 1965, as amended at 33 FR 12654, Sept. 6, 1968]



**PART 640—COMPLIANCE WITH THE  
NATIONAL ENVIRONMENTAL  
POLICY ACT**

Sec.

640.1 Purpose.

640.2 Committee on environmental matters.

640.3 Actions requiring an environmental assessment, and categorical exclusions.

640.4 Responsibilities and procedures for preparation of an environmental assessment.

640.5 Responsibilities and procedures for preparation of an environmental impact statement.

**AUTHORITY:** NEPA; the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.); Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609); Executive Order 11514, "Protection and Enhancement of Environmental Quality" (March 5, 1970, as amended by Executive Order 11991, May 24, 1977); and CEQ regulations at 40 CFR Part 1500-1508.

**SOURCE:** 45 FR 40, Jan. 2, 1980, unless otherwise noted.

**§ 640.1 Purpose.**

The purpose of this regulation is to adopt NSF procedures to supplement regulations at 40 CFR Parts 1500-1508 (hereafter referred to as "CEQ regulations").

**§ 640.2 Committee on environmental matters.**

(a) There is established an NSF Committee on Environmental Matters (hereafter referred to as the Committee) to consist of one representative from each directorate, the Office of General Counsel, the Office of Government and Public Programs, and the Office of Planning and Resources Management. The Assistant Director for Astronomical, Atmospheric, Earth, and Ocean Sciences, or his or her designee, shall serve as Chairman. At the discretion of the Chairman and with the concurrence of the Committee, additional members may be appointed.

(b) All incoming correspondence from CEQ and other agencies concerning matters related to NEPA, including draft and final environmental impact statements, shall be brought to the attention of the Chairman. The Chairman will prepare or, at his or her

discretion, coordinate replies to such correspondence.

(c) The Committee shall meet regularly to discuss NSF policies and practices regarding NEPA, and make recommendations on the need for or adequacy of environmental impact assessments or statements.

(d) With respect to actions of NSF, the Committee will:

(1) Maintain a list of actions for which environmental impact statements are being prepared.

(2) Revise this list at regular intervals, based on input from the directorates, and send revisions to CEQ.

(3) Make the list available for public inspection on request.

(4) Maintain a list of environmental impact assessments.

(5) Maintain a file of draft and final environmental impact statements.

(e) The Committee and/or the Chairman will perform such additional functions as are set forth elsewhere in this part and in other NSF issuances.

**§ 640.3 Actions requiring an environmental assessment and categorical exclusions.**

(a) The types of actions to be classified as "major Federal actions" subject to NEPA procedures are discussed generally in the CEQ regulations. Paragraph (b) of Section 640.3 describes various classes of NSF actions that normally require the preparation of an environmental assessment or an EIS, and those classes that are categorically excluded. (Categorical exclusion is defined at 40 CFR 1508.4.) The word "normally" is stressed; there may be individual cases in which specific factors require contrary action. NSF directorates and offices are responsible for identifying situations in which an environmental assessment or an EIS should be prepared even if not normally required by paragraph (b).

(b) Most NSF awards support individual scientific research projects and are not "major Federal actions significantly affecting the quality of the human environment" except in the sense that the long term effect of the accumulation of human knowledge is likely to affect the quality of the



human environment. However, such long term effects are basically speculative and unknowable in advance; thus they normally do not provide a sufficient basis for classifying research as subject to NEPA (See 40 CFR 1508.8) and are categorically excluded from an environmental assessment.

Nevertheless, in some cases the actual procedures used in carrying out the research may have potential environmental effects, particularly where the project requires construction of facilities or major disturbance of the local environment brought about by blasting, drilling, excavating, or other means. Accordingly, except as provided in paragraph (c) of this section, the following types of activities require at least an environmental assessment:

(1) Cases where developmental efforts are supported, if the project supports the transition of a particular technology from the development stage to large-scale commercial utilization.

(2) Any project supporting construction, other than interior remodelling.

(3) Cases where field work affecting the natural environment will be conducted.

(4) Any project that will involve drilling of the earth, excavation, explosives, weather modification, or other techniques that may alter a local environment.

(5) Any project that provides for the testing and release of biological-control agents for purposes of ecosystem manipulation and assessment of short- and long-term effects of major ecosystem perturbation.

(c) Directorates having divisions or programs with a substantial number of projects that fall within categories (3), (4), and (5) in (b) above, are authorized to issue supplemental guidelines to Division Directors and Program Officers establishing subcategories of research methodologies or techniques for which environmental assessments need not be prepared. For example, if a program regularly supports research that involves noninvasive techniques or nonharmful invasive techniques (such as taking water or soil samples, or collecting non-protected species of flora and fauna) the

directorates may determine that field projects otherwise coming under (b)(3) which involve only the use of such techniques do not require an environmental assessment. However, any such guidelines must be submitted to the Chairman for approval.

(d) In some cases within the categories listed in paragraph (b), it will be evident at the outset or after the assessment process is begun that an EIS should be prepared. In such cases an assessment need not be completed, but the process of preparing an EIS (See § 640.5, below) should be started.

#### § 640.4 Responsibilities and procedures for preparation of an environmental assessment.

(a) Program Officers, as the first point of decision in the review process, shall determine into which category incoming proposals fall, according to the criteria set forth in § 640.3 of this Part. Notwithstanding this responsibility of the Program Officer, the appropriate Division Director, Assistant Director, and other reviewing policy officials must assure that adequate analysis is being made.

(b) Where appropriate, programs, divisions, or directorates will advise prospective applicants in program announcements, requests for proposals, and other NSF-prepared brochures of the requirement to furnish information regarding any environmental impact that the applicant's proposed study may have.

(c) Should an environmental assessment be required, the directorate supporting the activity shall be responsible for its preparation. The grant or contract applicant may be asked to submit additional information in order that a reasonable and accurate assessment may be made. Though no specific format for an environmental assessment is prescribed, it shall be a separate document suitable for public review and shall serve the purpose described in 40 CFR 1508.9, which is quoted in full as follows:

#### § 1508.9 Environmental Assessment.

"Environmental Assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by Section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(d) A copy of the assessment or drafts shall accompany the appropriate proposal throughout the NSF internal review and approval process. At the option of the directorate preparing the assessment, a draft may be submitted to the Committee for its review and comments. Prior to an award decision, one copy of all completed assessments shall be sent to the Chairman for review and updating of the Committee listing of assessments.

(e) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a Finding of No Significant Impact (FNSI) as described in 40 CFR 1508.13 will be prepared. The FNSI shall include the environmental assessment or a summary of it and be available to the public from the Committee. If the proposed action is one that normally requires an EIS, is closely similar to an action normally requiring an EIS, or is without precedent, the FNSI shall be made available for a 30 day public review period before any action is taken.

**§ 640.5 Responsibilities and procedures for preparation of an environmental impact statement.**

(a) If initially or after an environmental assessment has been completed, it is determined that an environmental impact statement should be prepared, it and other related documentation will be prepared by the directorate responsible for the action in accordance with Section 102(2)(c) of the Act, this Part, and the CEQ regulations. The responsible directorate will be in close communication with the grant or contract applicant and may have to rely extensively on his or her input in preparing the EIS. How-

ever, once a document is prepared it shall be submitted to the Chairman who, after such review by the Committee as is deemed necessary by the Chairman, shall transmit the document as required by CEQ regulations and this Part. If the Chairman considers a document unsatisfactory, he or she shall return it to the responsible directorate for revision prior to an award decision.

Specifically, the following steps, as discussed in the CEQ regulations, will be followed in preparing an EIS:

(1) A notice of intent to prepare a draft EIS will be published as described in 40 CFR 1501.7.

(2) Scoping, as described in 40 CFR 1501.7, will be conducted.

(3) The format and contents of the draft and final EIS shall be as discussed in 40 CFR Part 1502.

(4) Comments on the draft EIS shall be invited as set forth in 40 CFR 1503.1. The minimum period to be afforded for comments on a draft EIS shall be 45 days, unless a lesser period is necessary to comply with other specific statutory requirements or in case of emergency circumstances, as described in 40 CFR 1506.11.

(5) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(6) The responsible directorate shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(7) The Act requires that the decisionmaking involved "utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts." If such disciplines are not present on the NSF staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(8) A copy of the draft EIS or the final EIS (or a summary, if the size of the EIS does not make this practical) shall be included in and accompany the appropriate proposal throughout the NSF internal review and approval process.

(b)(1) 40 CFR 1506.1 describes the types of actions that should not be taken during the NEPA process. Such actions shall be avoided by NSF personnel during the process of preparation of an EIS and for a period of thirty days after the final EIS is filed with EPA, unless such actions are necessary to comply with other specific statutory requirements.

(2) 40 CFR 1506.10 also places certain limitations on the timing of agency decisions on taking "major Federal actions". In some cases the actual "decision point" may be more clear-cut than others. If the "action" that necessitated the preparation of an EIS is one that would be carried out under grant, contract, or cooperative agreement, then the award shall not be made before the times set forth in 40 CFR 1506.10, unless such action is necessary to comply with other specific statutory requirements, or as exceptions are needed as provided in 40 CFR 1506.10, 1506.11, or 1507.3. However, an award for preliminary planning proposals may be made before such times if it is so structured as to require further NSF approvals for funding the actual actions that might adversely affect the quality of the human environment. In such cases, the subsequent approvals for funding these actions will be considered the "decision". This is consistent with the requirement that environmental considerations undergo concurrent review with all other project planning considerations.

(c) In appropriate cases, if the action involves other agencies, the Chairman may agree to designate another agency as "lead agency" and to cooperate as discussed in 40 CFR 1501.5 and 1501.6. In such cases, the Chairman has authority to alter the procedures described in (a) to the extent they are inconsistent with functions assigned to NSF under the "cooperating agency" arrangements.

(d) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national policy considerations that entered into the decision; and summarizing a monitoring and enforcement program if ap-

plicable for mitigation, will be prepared. This record of decision will be prepared at the time the decision is made, or if appropriate, when the agency makes its recommendation for action to Congress. (See 40 CFR 1505.2.)

## PART 650—PATENTS

### Sec.

- 650.1 Scope of part.
- 650.2 Definitions.
- 650.3 Source of authority.
- 650.4 Procedures for selection of clauses in awards.
- 650.5 Requests for special provisions at time of award.
- 650.6 Fellowships and traineeships.
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- 650.9 Greater rights determinations after disclosure.
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- 650.11 Availability of inventions to the public.
- 650.12 Delegations.

**AUTHORITY:** Secs. 11(e) and 12(a) of the National Science Foundation Act, as amended (42 USC 1870(e) and 1871(a)).

**SOURCE:** 39 FR 41982, Dec. 4, 1974, unless otherwise noted.

### § 650.1 Scope of part.

This part sets forth policies, procedures, and clauses with respect to rights in inventions made in the course of or under grants, fellowships, and other arrangements (other than contracts subject to Title III of the Federal Property and Administrative Services Act of 1949, as amended) entered into by the National Science Foundation. Policies, procedures, and clauses with respect to rights in inventions made under contracts subject to the Federal Property and Administrative Services Act are set forth in 41 CFR 25-9.

### § 650.2 Definitions.

As used in this part—

(a) The term "award" includes grants, and other arrangements (other than contracts subject to Title III of Federal Property and Administrative Services Act of 1949, as amended) entered into by the Foundation which are made for the purpose of supporting experimental, developmental, or



research work or which contain a significant element of such activity. Examples of such awards include scientific research project grants, student originated studies, and cooperative agreements for the support of research. For the purpose of this part, the term "award" does not include grants, or other arrangements which do not require substantial experimental, developmental or research work such as facilities and equipment grants, institutional formula grants, grants for the conduct of summer institutes, and travel and conference grants. The term "award" also includes fellowships and traineeships;

(b) the term "Director" means the Director of the Foundation;

(c) the term "foundation" means the National Science Foundation;

(d) the term "grantee" means the recipient of an award, and may, as the context requires, include subcontractors of a grantee at any tier;

(e) the term "invention" includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country;

(f) the term "to the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public;

(g) the term "President's Policy" means the President's Statement of Government Patent Policy issued August 23, 1971 (36 FR 16887, August 26, 1971); and

(h) the term "Patent Policy Review Committee" refers to a committee made up of Foundation personnel and established by the Director to administer certain aspects of Foundation patent policy.

#### § 650.3 Source of authority.

(a) Section 12(a) of the National Science Foundation Act of 1950, as

amended (42 U.S.C. 1871(a)), provides as follows:

Each contract or other arrangement executed pursuant to this Act which relates to scientific research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed; Provided, however, that nothing in this Act shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provisions of law affecting the issuance or use of patents.

(b) Section 11(e) of the same Act provides as follows:

The Foundation shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this Act, including, but without being limited thereto, the authority . . .

(e) to acquire by purchase, lease, loan, gift, or condemnation, and to hold and dispose of by grant, sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this Act.

The President's Policy provides guidance as to basic policies to be followed by executive agencies with respect to inventions or discoveries made in the course of their awards. The provisions set forth in this part are intended to implement the National Science Foundation Act in accordance with the basic guidelines and philosophy of the President's Policy.

#### § 650.4 Procedures for selection of clauses in awards.

(a) The clause at paragraph (b) of this section shall be used in every award except (1) where § 650.5 of this part is applicable, or (2) where the award is for a fellowship or traineeship as provided in § 650.6 of this part, or (3) where the award falls within a class of awards as provided in § 650.7 of this part, or (4) where the award is subject to an Institutional Patent Agreement entered into pursuant to § 650.8 of this part.

(b) The following clause shall be included in Foundation awards in accordance with paragraph (a) of this section:



## RIGHTS IN INVENTIONS

(a) Whenever any invention which is, or may be, patentable is conceived or first actually reduced to practice in the course of or under this ———, <sup>1</sup> the ———, <sup>2</sup> shall furnish the Foundation with complete information thereon; and the Foundation shall have the right to determine whether or not and where a patent application shall be filed, and to determine the disposition of the invention and title to and rights under any patent application or patent that may result. The Foundation, in making such a determination, shall take into account the public interest and equities of the grantee. In any case, the Foundation may arrange to have the invention described in a printed publication.

(b) The ———, <sup>2</sup> for itself and for its employees, agrees that all documents will be executed and all other actions taken necessary or proper to carry out the determination of the Foundation.

(c) Except as otherwise authorized in writing by the ———, <sup>3</sup> ———, <sup>2</sup> will insert in each subcontract having experimental, developmental, or research work as one of its purposes, provisions making this article applicable to the subcontractor and its employees and any lower-tier subcontractors and their employees.

#### § 650.5 Requests for special provisions at time of award.

(a) At the request of the prospective grantee, special provisions other than the clause at § 650.4(b) of this part may be negotiated where the award falls within section 1(b) of the President's Policy or where exceptional circumstances, as set forth in section 1(a) of the President's Policy, exist. In accordance with section 1(c) of the President's Policy, such provisions may also be negotiated at the time of award with educational or other nonprofit institutions having a demonstrated capability for effective patent management.

(b) In negotiating such provisions the procedures, requirements, and limitations of, and the clauses prescribed at 41 CFR 25-9.103(c) shall be applicable.

<sup>1</sup>Insert "grant" or other applicable term as the case may be.

<sup>2</sup>Insert "grantee" or other applicable term as the case may be.

<sup>3</sup>Insert "Grants Officer" or other applicable term as the case may be.

#### § 650.6 Fellowships and traineeships.

Each fellowship awarded by the Foundation shall include the provision below. This provision defines the rights of the Foundation and is not intended to preclude educational institutions from obtaining rights in accordance with their policies. A substantially similar provision shall be used in Traineeship awards.

## RIGHTS IN INVENTIONS

(a) Whenever any invention which is, or may be, patentable is conceived or first actually reduced to practice in the course of the fellowship, and a patent application is filed thereon, the Fellow shall furnish the Foundation with complete information thereon and a copy of the patent application with date of filing and serial number.

Title to and rights in any such invention shall remain in the Fellow; provided, however, that the Fellow hereby grants (and agrees to execute upon request a confirmatory license) a non exclusive, nontransferable, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and States and domestic municipal governments, unless the Director determines that it would not be in the public interest to acquire the license for State and domestic municipal governments. The Fellow further agrees that unless the Fellow, his licensee or his assignee, has taken effective steps within three years after a patent issues on any such invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable under the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government, acting through the Director of the National Science Foundation or his delegee(s), shall have the right to require the granting of a nonexclusive or exclusive license to a responsible applicant(s) on terms that are reasonable under the circumstances. It is also agreed that the Government, acting through the Director of the National Science Foundation or his delegee(s), shall have the right to require the granting of a nonexclusive or exclusive license to a responsible applicant(s) on terms that are reasonable under the circumstances (i) to the extent that the invention is determined to be required for public use by governmental regulations or (ii) is determined to be necessary to fulfill health or safety needs.

(b) As used herein the term "to the point of practical application" means to manufac-

ture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(c) As requested by the Foundation, the Fellow shall make periodic written reports on the commercial use that is being made or is intended to be made of any such inventions.

(d) The Fellow agrees that the following statement will be included in the second paragraph of the specification of the patent application and any resulting patent:

"The Government has rights in this invention pursuant to a fellowship awarded by the National Science Foundation."

(e) Nothing herein shall affect or limit the rights that the Government may have in any invention pursuant to the terms of any other award to any other party.

#### § 650.7 Special classes of awards.

With the approval of the General Counsel, alterations to the clause prescribed at § 650.4(b) may be used allowing or guaranteeing the grantee's retention of specific rights in special classes of awards where the amount of support is small and where all or a part of the work will take place at profit-making organizations, for example, an "Option B" type Engineering Research Initiation Grant or a Faculty Research Participation Grant.

#### § 650.8 Institutional Patent Agreements.

(a) The Foundation has determined that the public interest in the availability of inventions will normally best be served by allowing educational and other nonprofit institutions having a technology transfer program meeting the criteria set forth in paragraph (b) of this section the right to a first option to ownership in inventions made in the course of or under awards (other than fellowships or traineeships) and contracts, subject to the limitations described in paragraph (c) of this section. This right will be embodied in an Institutional Patent Agreement (hereinafter sometimes referred to as an "IPA"), which will generally apply to all awards made to and contracts made with the institution, other than contracts to operate a National Research Center or similar facility. The purpose of IPA's is to reduce unnecessary administrative

burdens when institutions have effective means and active programs for exploiting inventions in the public interest. The Foundation reserves the right to and may deny a request for an IPA or terminate an existing IPA with an otherwise qualified institution in cases where the institution's record of invention disclosures to the Foundation, the level of Foundation support to the institution, or other factors appear to minimize the advantages of issuing or continuing an IPA in comparison with the administrative burdens which would otherwise exist.

(b) Among the criteria which will be considered in determining whether an institution has a satisfactory technology transfer program are the following:

(1) The institution has a formal patent policy which is administered on a continuous basis by an officer or organization responsible to the institution.

(2) The institution can give assurance that employees are legally obligated to assign to the institution any inventions made by them in the course of or under awards.

(3) The institution has an effective invention disclosure system.

(4) The institution has an active and effective promotional program for the licensing and marketing of inventions which is consistent with the objectives of the President's Policy.

(c) Institutional Patent Agreements will (1) reserve to the Government the rights specified in § 650.10 of this part; (2) require the institution or its patent management organization normally to license inventions on a nonexclusive basis and failing this to limit, unless otherwise approved by the Foundation, exclusive licenses granted under domestic patents to a period of three years from first commercial sale or eight years from the date of the inception of the license agreement, whichever occurs first; provided that, after the period specified above for the duration of exclusive licenses, additional licenses will be made available on a nonexclusive basis at no greater royalties; (3) limit the use of patent management organizations to those specified in the IPA or approved by the Foundation; (4) provide that the insti-

tution use any net royalty income retained by it for the support of education or scientific research; (5) provide that the Foundation may exempt specific awards and contracts from the application of the IPA; (6) include a provision similar to that set forth in § 650.9(c)(2); and (7) include such other terms and conditions as are considered necessary.

(d) Institutions desiring to enter into IPA's should contact the Office of General Counsel for additional information. The General Counsel has been given authority to negotiate IPA's on behalf of the Foundation subject to approval of an institution's qualifications for patent management by the NSF Patent Policy Review Committee and approval and execution by the Grants and Contracts Officer.

(e) Except as provided in § 650.10(f) of this part, the General Counsel, or his designee, is authorized to act on behalf of the Foundation in connection with decisions and actions which may be required under Institutional Patent Agreements (such as the granting of time extensions, required approvals, or other administrative actions).

(f) In accordance with applicable criteria and guidelines established by the Director and/or individual Assistant Directors, NSF Program Managers or other Foundation personnel shall identify and refer to the NSF Patent Policy Review Committee any potential awards to institutions holding IPA's which might be considered for exclusion from the coverage of the IPA.

[39 FR 41982, Dec. 4, 1974, as amended at 40 FR 34598, Aug. 18, 1975]

#### § 650.9 Greater rights determination after disclosure.

(a)(1) Grantees desiring to retain rights in inventions made under or during the course of awards containing provisions that condition the retention of principal rights in such inventions by the grantee on the determination of the Foundation, such as those prescribed at § 650.4(b) of this part, should address their request to the General Counsel who has been delegated authority to make such determinations. In all such cases the General Counsel shall seek the recom-

mendations and advice of the Patent Policy Review Committee.

(2) Such requests should contain the following information:

(i) The award number, and subcontract number, if applicable, under which the invention was made;

(ii) A complete invention disclosure or reference to one that has previously been furnished, including any NSF identifying numbers, if known;

(iii) A description of the relationship of the invention to the main purpose of the award;

(iv) The grantee's evaluation of the commercial possibilities of the invention both in its original embodiment and in possible adaptations to other uses;

(v) An explanation of why it is believed that rights greater than free public use are needed to bring the invention into use;

(vi) The nature and extent of the rights desired;

(vii) A description of the stage of development of the invention, and an estimate of the cost of development, capital and time required to bring the invention to the point of practical application as defined in the President's Policy;

(viii) A statement of the grantee's plans and intentions to bring the invention to the point of practical application including:

(A) If further development is to be conducted by the grantee, a description of the facilities, source of funds, personnel, and marketing outlets available for the purpose and the extent to which such development is to be undertaken by the grantee or others on his behalf and/or

(B) If he intends to license the invention, a brief description of his licensing program;

(ix) A statement of any equities in the invention which the grantee believes it has in the invention which would be appropriate for consideration by the Foundation, with particular emphasis on direct contributions to the cost of making the invention as opposed to general factors such as the provisions of facilities or experience in research;

(x) If other Government agencies have contributed to the cost of making



the invention, the identification of such agencies and the grant or contract involved, and the approximate share of each;

(xi) A listing of other countries in which the grantee would be interested in filing applications for patents;

(xii) If publication of the substance of this invention has occurred or is planned or there has been a use or sale such as might possibly create a future statutory bar to the patenting of the invention, the name of the journal, the date or probable date of publication, a reprint of the article if it has been published or a copy of the draft as submitted for publication, and/or details regarding the use or sale of the invention;

(xiii) An identification and indication of the ownership of any patents, patent applications, or invention disclosures known to the grantee which would affect the practice of the invention.

(b) Determinations under this section shall be made on the basis of the guidelines set forth in the President's Policy and this part. In addition, the relationship of the invention to other technology controlled by the grantee shall be considered as discussed in § 650.11 of this part.

(c) (1) In cases where principal rights in an invention are left with a grantee which, itself, is not expected to further develop the invention, the Foundation requires the grantee to make reasonable attempts to license inventions on a nonexclusive basis; provided that an exclusive license may be granted if the grantee determines that an exclusive license is necessary as an incentive for development of the invention or because market conditions are such as to require licensing on an exclusive basis in order to bring the invention into use. This determination shall be in writing and supplied to the Foundation at or before the time an exclusive license is granted. Any such exclusive license granted under a domestic patent or patent application will normally be limited to a period of three years from first commercial sale or eight years from the inception of the license agreement, whichever occurs first. Thereafter, unless the original exclusive license

period is extended with the approval of the Foundation, additional licenses will be made available on a nonexclusive basis at a royalty not greater than that charged to the exclusive licensee.

(2) The willingness of a grantee to assume the costs and risks associated with the bringing of an invention to the point of practical application is a significant factor influencing most determinations that the grantee should be allowed to retain principal rights in an invention made under the award. Consequently, a provision limiting the use of Foundation funds for further development of such inventions will normally be included as a condition of each such determination. For this purpose, a provision such as the following shall be used:

(a) Unless specifically approved by the Grants and Contracts Officer, the grantee shall not use funds provided by the Foundation for performing development, engineering, or design work directed toward a commercial embodiment of the invention.

(b) Subsection (a) shall not apply to efforts made to improve the invention for the primary purpose of enhancing its utility in connection with scientific research conducted by the grantee. Further to the extent that the work statement in the award or proposal upon which the award was based clearly specifies a line of research to be pursued, subsection (a) shall not apply to the pursuance of such research.

(3) In addition to the requirements of paragraph (c)(1) of this section, any determination under this section shall reserve to the Government the rights set forth in § 650.10 of this part. In addition, if it has not already done so, the grantee will be required to have a domestic patent application filed on the invention within 6 months from the date of the determination, or such longer period as may be authorized by the Foundation for good cause shown by the grantee. Each determination will also include appropriate provisions concerning foreign rights. The determination may also include such other provisions as are considered appropriate.

(4) Whenever the clause at § 650.4(b) has been used or an Institutional Patent Agreement is applicable and the grantee does not wish to retain principal rights and neither the Foun-



dation nor any other Government agency notified of the invention by the Foundation wishes to take principal rights in the invention, it shall normally be dedicated to the public through publication. However, principal rights may be left in the inventor(s) if he (they) so request upon demonstration of an intention to exploit the invention and a description satisfactory to the Foundation of the means by which this is to be accomplished. All such requests will be made and processed in accordance with the procedures set forth in this section and determinations thereon shall contain the requirements of paragraphs (c) (1) and (3) of this section.

[39 FR 41982, Dec. 4, 1974, as amended at 40 FR 34598, Aug. 18, 1975]

#### § 650.10 Minimum government rights.

In all cases where the grantee or any other person or entity has been allowed to retain or obtain principal rights in an invention or possible future inventions, whether at the time of award or after an invention has been identified, the Foundation shall reserve the following minimum rights, if not otherwise required by or inconsistent with any other provision of this part.

(a) A nonexclusive, nontransferable, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and States and domestic municipal governments, unless the Director determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(b) The right to sublicense any foreign government pursuant to any existing or future treaty, or agreement, but only if the Director determines it would be in the national interest to acquire this right.

(c) The principal or exclusive rights to the invention (or the right to acquire the same) in any country in which the grantee does not elect to secure a patent.

(d) The right to require written reports at reasonable intervals on the commercial use that is being made or

is intended to be made of the invention.

(e) The right to require the inclusion of the following appropriately completed statement in the second paragraph of the specification of any patent application or patent: "The Government has rights in this invention pursuant to Grant (or other award designation) No. ——— awarded by the National Science Foundation."

(f) The right to require the granting of a nonexclusive or exclusive license to a responsible applicant on terms that are reasonable under the circumstances (1) unless it is determined that effective steps have been taken within three years after a patent issues on the invention to bring the invention to the point of practical application, or that the invention has been made available for licensing royalty-free or on terms that are reasonable under the circumstances or unless cause can be shown why the Foundation should not exercise this right for some further period of time; (2) to the extent the invention is determined to be necessary to fulfill health or safety needs; or (3) to the extent the invention is determined to be needed for other public purposes stipulated in the award. Determinations and other actions taken pursuant to this paragraph (f) shall be by the Director or by such person(s) as he may designate.

(g) The right to approve any license covering the invention proposed to be granted to any of the following persons or organizations:

(1) Any person who participated as an employee of the grantee in the research leading to the conception and/or actual reduction to practice of the invention;

(2) An organization of which a person described in subsection (g)(1) of this section was an active promoter or organizer or in which such a person is an officer, director, or holds a substantial interest;

(3) An organization of which the grantee was an active promoter, organizer, or financier.

Approval of such a license shall be given only if the grantee can show that a bona fide effort was made without success to interest other organiza-

tions, known to be interested in the subject matter of the invention, in becoming licensees, or can otherwise show why the public interest will best be served by the proposed licensing arrangement. Notwithstanding anything above, this paragraph (g) shall not apply in the case of an award to a for-profit grantee.

**§ 650.11 Availability of inventions to the public.**

(a) A major objective of the Foundation is to encourage the use of inventions arising out of activities supported by the Foundation. It is important that any useful product or process developed or improved under an award is made available to the public on reasonable terms. In some cases, to ensure such availability it may be necessary, either at the time of award or in connection with the determination under § 650.9 to require the grantee to furnish to responsible applicants technical data or rights in other inventions to the extent necessary to practice the invention made or product or process developed or improved under the award.

(b) Program managers or other Foundation personnel shall refer cases involving preexisting proprietary technology (such as "proprietary data," "trade secrets," patents, or patent applications) to the General Counsel or the Patent Policy Review Committee in accordance with applicable Staff Memoranda.

**§ 650.12 Delegations.**

The General Counsel is authorized to make any determinations required by these regulations to be made by the Director, including determinations required by the President's Policy to be made by the head of the agency, except those specified in § 650.10(f).

**PART 660—PROJECT NOTIFICATION AND REVIEW SYSTEM; NOTIFICATION TO STATES OF AWARD INFORMATION**

**Sec.**

660.1 Purpose.

660.2 Application of part.

660.3 Definitions.

**Sec.**

660.4 Notification of intent (NOI) and consultation and review procedures.

660.5 State requirements.

660.6 Submission of SF 424 with proposals under covered programs.

660.7 NSF consideration of clearinghouse comments.

660.8 Notification to clearinghouses of action taken—SF 424.

660.9 Supplemental reporting of award information.

**AUTHORITY:** Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577); OMB Circular A-95 (Revised) appearing at 41 FR 2052; Treasury Circular 1082 (Revised) appearing at 40 FR 54378, with additional subsections appearing at 41 FR 2652; National Science Foundation Act of 1950, as amended, (Pub. L. 81-507) Sec. 11(a).

**SOURCE:** 41 FR 19644, May 13, 1976, unless otherwise noted.

**§ 660.1 Purpose.**

As required by paragraph 7 of OMB Circular A-95 (Revised) (hereinafter referred to as "A-95") this part prescribes the regulations of the National Science Foundation (hereinafter referred to as "NSF") to implement the project notification and review system prescribed by Part I of A-95, including the use of Standard Form 424, Federal Assistance Preapplication, Application, Notification of Intent or Report of Federal Action (hereinafter referred to as "SF 424") in connection with proposals to NSF Programs subject to Part I requirements and for notification of action thereon. This part also describes NSF implementation of the supplemental reporting requirements of Treasury Circular 1082 (Revised) (hereinafter referred to as "TC 1082").

**§ 660.2 Application of part.**

This part applies to (a) any agency of State or local government, any academic institution, or any other organization or individual, undertaking to submit a proposal to NSF for support of a project or major substantive modification thereto under a Federal program covered by Part I of A-95, and (b) NSF employees involved in the receipt, evaluation, or action taken on such proposals. Unless otherwise indicated, references to "A-95" used here-

inafter mean Part I of that Circular as revised.

### § 660.3 Definitions.

Terms used in this part will have the meanings indicated below. Where the primary source of a term is Title I of PL 90-577, Part V of A-95, or Paragraph 4 of TC 1082, that fact is indicated parenthetically.

(a) *State*—Any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. (Pub. L. 90-577, Sec. 102)

(b) *Local Government*—a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district political subdivisions of the State. (Pub. L. 90-577, Sec. 103)

(c) *Unit of general local government*—any city, county, town, parish, village, or other general purpose political subdivision of a State. (Pub. L. 90-577, Sec. 104)

(d) *Special-purpose unit of local government*—any special district, public purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district. (Pub. L. 90-577, Sec. 105)

(e) *Grant-in-Aid*—money, or property provided in lieu of money, paid or furnished by the United States under a fixed annual or aggregate authorization—

(1) To a State; or

(2) To a political subdivision of a State; or

(3) To a beneficiary under a plan or program, administered by a State or a political subdivision of a State, which is subject to approval by a Federal agency; if such authorization either (i) requires the States or political subdivisions to expend non-Federal funds as a condition for the receipt of money or property from the United States; or (ii) specifies directly, or establishes by means of a formula, the amounts which may be paid or furnished to States or political subdivisions, or the amounts to be allotted for use in each of the States by the States, political subdivisions, or other beneficiaries.

The term does not include payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private (Pub. L. 90-577, Sec. 106).

(f) *Federal assistance*—programs that provide assistance through grant or contractual agreements. (Pub. L. 90-577, Sec. 107)

(g) *Clearinghouse*—includes:

(1) *State Clearinghouse*—an agency of the State Government designated by the Governor or by State law to carry out the requirements of Part I of A-95.

(2) *Areawide Clearinghouse*—(i) In nonmetropolitan areas, a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of A-95; or

(ii) In metropolitan areas, an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under A-95. (A-95, V. 10)

(h) *State central information reception agency (SCIRA)*—the State agency which has been designated by the Governor, in consultation with the legislature, to serve as the central reception point for Federal grant-in-aid information furnished under section 201 of the Intergovernmental Cooperation Act of 1968. (TC 1082, 4 F)

(i) *Covered Program*—Any NSF Program listed in Attachment D to A-95 or in Appendix I to the *Catalog of Federal Assistance*, whichever is later.

(j) *Project*—A definitely formulated research activity or other planned scientific undertaking. Excludes international travel grant activities.

(k) *Exempt Project*—(1) A project proposed for support under an NSF program not covered by A-95 (see also § 660.5); or (2) A proposed project, for support under a covered program, which is national in scope and would not impact on the development of the particular State, area, or locality in which it is being conducted. (See § 660.4).

(l) *Major Substantive Modification*—(1) Any change in the nature or scope



of the project which might result in a funding change, considered to be a "revision" for the purposes of SF 424; or (2) Any proposal for renewed support of a project beyond the period contemplated in the original proposal, considered to be a "renewal" for the purposes of SF 424.

(m) *Proposal*—An application for NSF support of a project.

#### § 660.4 Notification of intent (NOI) and consultation and review procedures.

(a) Any individual, organization, or association planning to submit a proposal for NSF support of a project, or major substantive modification thereto, which is not exempt from the provisions of this part, must notify the State clearinghouse of its intent. In the event a national organization or association intends to submit a proposal which it believes to be exempt under § 660.3(k)(2), the prospective applicant should consult with the appropriate NSF Program Officer prior to concluding that a notification of intent (NOI) is not required.

(b) Unless requested to do so by the clearinghouse in accordance with subparagraph 4 g of A-95, NSF grantees or contractors need not send an NOI to the clearinghouse prior to submitting a proposal either for supplemental support of a project during the currently approved period of support, considered to be an "augmentation" for the purposes of SF 424, or for continued support of a project beyond the current period of support if the project was proposed and has been approved for such longer period of support and no major substantive modification is contemplated, considered to be a "continuation" for the purposes of SF 424.

(c) If the project has specific applicability to or would affect local or areawide planning or programs, the governmental unit(s) where such impact would occur shall be identified and the notification also shall be sent to the areawide clearinghouse(s) having jurisdiction.

(d) Unless an applicable clearinghouse has prescribed some other form, SF 424 (Attachment E to A-95) may be used as the NOI required by subparagraph 2a of that Circular, by comple-

tion of Section I, Applicant/Recipient Data, as prescribed in "Applicant Procedures for Section I." The legal applicant/recipient described in item 4 of SF 424 should establish such internal control procedures as may be appropriate to ensure that the NOI adequately describes a project which the organization will conduct, if ultimately approved. Item 2 may be used for this purpose. Section 660.5(c), below, provides amplifying instructions for the subsequent use of the same form as the face sheet for the proposal to a covered NSF program.

(e) The NOI should be sent at the earliest feasible time, to permit the clearinghouse(s) to perform the functions prescribed in paragraph 3 of A-95. As indicated in subparagraph 4a of A-95, clearinghouses normally have 30 days to coordinate the NOI with appropriate State, multi-State, local, or regional governments or agencies, and to furnish comments to the applicant. If the review is not completed during this period, subparagraph 4b of A-95 provides for a clearinghouse to assist the applicant, during the proposed preparation phase, in the resolution of any problems raised by the NOI. If the clearinghouse so requires, it may have 30 days to review the completed application.

(f) A clearinghouse may request information beyond that contained in the NOI. If the requested information is required by NSF in its proposal submission guidelines, it, or the proposal itself, should be furnished to the clearinghouse. If the requested information is not so required, the applicant is encouraged to supply it to the clearinghouse if it is readily at hand and will not entail any extra expenditures of time or resources. In either event, the proposing institution or organization may omit confidential information of the types described in subparagraph 4e of A-95.

#### § 660.5 State requirements.

Subparagraph 8g of A-95 recognizes that some States may have laws, executive orders, or administrative regulations which require review of applications for Federal assistance under various programs not covered by A-95.



Proposing institutions or organizations are encouraged to ascertain the existence of such State requirements and to acquaint themselves with applicable State procedures. However, implementation of any such requirements is enforced through State laws and regulations. Nothing in this regulation shall be construed as an NSF requirement to extend the provisions of A-95 to any proposal for support of a project not covered thereby nor to enforce the rules and regulations of any of the several States concerning review of applications for Federal assistance.

**§ 660.6 Submission of SF 424 with proposals under covered programs.**

(a) In accordance with subparagraph 4f of A-95, applicants for support under covered programs must submit to NSF, with the completed proposal, evidence that the consultation and review procedures have been followed, and, where comments or recommendations have been made by or through clearinghouses, to furnish them to NSF.

(b) SF 424 provides a standardized means of evidencing compliance with the consultation and review procedures and is the required face sheet for proposals to covered programs. Proposing institutions or organizations are encouraged to begin using that form as soon as feasible, but shall do so in connection with any proposals submitted to covered programs on and after April 29, 1976. If the State clearinghouse has returned the SF 424 used as the NOI, the same form (or reproduced copies thereof) may be used by the proposing institution or organization to satisfy this requirement by (1) checking "application" in Section I, (2) completing Sections I and II in accordance with the applicant procedures prescribed on the form, as amplified in (c) below, and (3) attaching to the signed original any written comments received by or through clearinghouse(s). If more than 30 days (plus round trip mail time) have elapsed since the NOI was submitted with no comments from the clearinghouse(s), the proposing institution or organization may prepare a new SF 424, certifying that there has been no response. However, the State

Application Identifier (SAI) must be shown. In either event, the completed SF 424 should be reproduced in sufficient copies to be used in lieu of the proposal cover page traditionally required by NSF.

(c) The applicant procedures for Sections I and II of SF 424 are amplified as follows for proposals for NSF support of projects under covered programs:

(1) Item 4, Legal Applicant Recipient—

(i) Applicant Name—list the commonly used name of the institution or organization which will provide the facilities and logistic support for the proposed project. (Normally, this is the employer of the principal investigator or project director.) In the event the grant or contract should be awarded to a different organization, check item 21, and, in Section IV add: "4 i, Grantee" (or contractor, if appropriate), and list the commonly used name of the organization to which the grant (or contract) should be awarded, if the project is approved for NSF support, and the address if different from that shown in (c) through (g).

(ii) Organization Unit—for any proposal, list the agency, department, or school, to which the principal investigator or project director is assigned; if the proposal is from a branch or campus of a statewide institution of higher education, list such branch or campus.

(iii) Address—list the mailing address of the organizational unit in (b).

(iv) Contact Person—list the name, title, and telephone number of the prospective principal investigator or project director, whose signature must be added to the original of the SF 424 used as the face sheet for the original proposal. Such signature signifies the agreement of the signor to assume responsibility for the scientific or technical direction of the project if NSF agrees to support it and for the preparation of required technical reports.

(2) Item 6, Program—if the proposal is in response to a Proposal Solicitation or Request for Proposals, check item 21, and in Section IV add: "6c., Program Solicitation" (or Request for Proposals) and indicate the number

and date of the NSF document which solicited or requested the proposal.

(3) Item 7, Title and Description of Applicant's Project—This project description is not a substitute for the scientific abstract required in NSF proposals. It should be worded so as to assist the clearinghouse(s) in determining which State or local governmental agency might be interested in the project, and to assist such agencies in determining whether or not the project might have a direct impact on their capacity building or other planning activities. It should indicate the basic project nature (e.g., basic or applied research, interchange of scientific information, etc.) and its objectives.

(4) Item 11—Estimated Number of Persons Benefitting—unless the project is jurisdiction specific, and its expected results are anticipated to directly affect persons within that jurisdiction, indicate "N.A." (not applicable).

(5) Item 13—Proposed Funding—In most science projects supported by NSF, the only cost-sharing requirement is that the grantee must share in the costs of a project, not solicited by NSF, in more than a token amount, as defined in the NSF Grant Administration Manual. Therefore, unless there are specific plans for significant funding commitments from the types of agencies or organizations listed in b. through e., those entries should be marked "N.A." (not applicable).

(6) Item 22 a, Applicant Certification—In lieu of the assurances contained in Part V of Exhibit M-3 to FMC 74-7, the "attached assurances" for NSF purposes are:

"On behalf of the applicant agency, institution, or organization I certify that the project described above is consistent with its policies and goals and that submission of this proposal is in accordance with its procedures and pursuant to appropriate authority. On behalf of the organization designated as the intended recipient of the requested Federal funding, I certify that it has legal authority to accept grants or contracts and the requisite policies, procedures, and personnel to ensure stewardship of Federal funds as outlined in the NSF Grant Administration Manual."

"In the event that NSF agrees to provide financial support of the project substantially as requested in the attached proposed budget or such modifications thereof as may be mutually agreed, I affirm that the applicant agency, institution, or organization will:

(i) Make available the necessary facilities, equipment, services, and personnel to conduct the project substantially as outlined in the attached proposal or such modifications thereof as may be mutually agreed;

(ii) Conduct such project oversight as may be appropriate, manage the Federal funding with probity and prudence, and comply with the terms and conditions of the NSF grant or contract; and

(iii) Comply with applicable laws and regulations."

"In submitting this proposal, I further affirm that the 'Assurance of Compliance with National Science Foundation Regulations under Title VI of the Civil Rights Act of 1964,' previously executed, is fully applicable to the project."

(d) In accordance with subparagraph 6(b) of A-95, any formal proposal for support of a project under a covered program, not accompanied by evidence of compliance with the consultation and review procedures and an SAI number, will be returned to the proposing institution or organization for compliance with such procedures.

#### § 660.7 NSF consideration of clearinghouse comments.

(a) The NSF Program Officer who makes the staff evaluation of the proposal will consider any comments submitted by or through clearinghouses. However, since the subject matter of clearinghouse comments and recommendations, prescribed by paragraph 5 of OMB Circular A-95, does not involve the NSF criteria for the selection of research projects (appearing at 39 FR 42954), copies of such clearinghouse comments normally will not be made available to outside reviewers.

(b) In some cases, a clearinghouse may recommend that a proposal be disapproved or that it be approved only with specific and major substantive changes. In the event that the

Program Officer of a covered program recommends approval of the project substantially as proposed, or with changes which differ from those recommended by the clearinghouse, a brief explanation for the clearinghouse will be prepared as required by subparagraph 6d of A-95, for attachment to the SF 424.

(c) In some cases, a clearinghouse may recommend against approval of a project because it appears to conflict with or duplicate another Federal or federally assisted project. In that event, the Program Officer will consult with the agency assisting the referenced project, as required by subparagraph 6e of A-95, prior to recommending an award. If the Program is covered by A-95, such consultation will be indicated in Section IV of SF 424.

(d) In some cases, clearinghouse comments may indicate that a unit of general local government, having jurisdiction over the area in which a project is to be performed by a special purpose unit of local government, has submitted or plans to submit a proposal for the same or a similar type of project. Although NSF administers no programs of grants-in-aid which are subject to the provisions of Section 402 of the Intergovernmental Cooperation Act of 1968 or of subparagraph 6f of A-95 (favoring units of general local government) the Program Officer shall consider the merits of each of the two proposals prior to recommending final action on that from the special purpose unit of local government.

(e) When action is recommended on a proposal, the Program Office in a covered Program will complete those portions of Section III of SF 424, submitted with the proposal, which identify the Program, and indicate whether or not remarks have been added. Other Program Offices may file the externally initiated SF 424 or comparable State form in the proposal jacket without further action. (During the transition period between the effective date of this part and the time at which proposals accompanied by externally initiated SF 424 reach the action stage, the Program Officer will initiate the SF 424, completing sufficient portions of Section I to provide the types

of identifying information formerly furnished in Standard Form 240, plus programmatic portions of Section III.)

#### § 660.8 Notification to clearinghouses of action taken—SF 424.

In accordance with subparagraph 6c of A-95 the following notification actions will be taken:

(a) If a proposal for support under a covered program is withdrawn or declined, the Program Officer shall complete additional appropriate entries in Section III and mail the completed form(s) to the clearinghouse(s) listed in Section II within seven working days after receipt of the withdrawal request or simultaneously with dispatch of the declination letter, as appropriate.

(b) If the Program Officer recommends that an award be made, the SF 424 and related documents shall be sent to the Division of Grants and Contracts as part of the recommended award package, for completion and dispatch. However, since the amounts of funding, if any, to be contributed by the proposing institution or organization, the State or local government, or other source are not required in proposals to most NSF programs and would not normally be known to NSF except through the proposed funding entries in Section I, the funding contributions by other than the Federal government will not be shown in Section III. Following signature of the grant or contract, the action date will be stamped on the form at the same time that the award is dated and copies will be dispatched to each of the clearinghouses listed in Section II simultaneously with dispatch of the award instrument to the grantee or contractor.

#### § 660.9 Supplemental reporting of award information.

In furtherance of the TC 1082 supplemental reporting requirement, NSF will continue to provide to each SCIRA a Statewide Award Report which provides aggregated information on each project award made by NSF during the previous quarter to any agency of State or local government, any academic institution, or any



other non-profit organization or commercial firm within the State. The report includes information on all such awards, including those separately reported to clearinghouses in accordance with A-95 requirements.

It contains most of the essential data elements contained in SF 424. However, since the SAI number is not a standard NSF data element, it is contained only in the SF 424 furnished to clearinghouses in accordance with § 660.8 of this part.

## **PART 670—CONSERVATION OF ANTARCTIC ANIMALS AND PLANTS**

### **Subpart A—Introduction**

Sec.

670.1 Purpose of regulations.

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670.23 [Reserved]

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670.24 Specific issuance criteria.

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Sec.

670.27 [Reserved]

### **Subpart G—Specially Protected Areas**

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670.30 Designation of specially protected areas.

670.31 [Reserved]

### **Subpart H—Sites of Special Scientific Interest**

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670.34 Designation of sites of special scientific interest and management plans for those sites.

670.35 [Reserved]

### **Subpart I—Import Into and Export From the United States**

670.36 Specific issuance criteria for imports.

670.37 Specific issuance criteria for exports.

670.38 Content of permit applications.

670.39 Entry and exit ports.

670.40 [Reserved]

### **Subpart J—Introduction of Non-Indigenous Plants and Animals**

670.41 Specific issuance criteria.

670.42 Content of permit applications.

670.43 Conditions of permits.

670.44 [Reserved]

**AUTHORITY:** Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

**SOURCE:** 44 FR 32699, June 7, 1979, unless otherwise noted.

### **Subpart A—Introduction**

§ 670.1 Purpose of regulations.

The purpose of these regulations is to conserve and protect the native mammals, native birds and native plants of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Pub. L. 95-541.

§ 670.2 Scope.

These regulations apply to:

(a) Taking any mammal or bird native to Antarctica,

(b) Collecting any plant native to Antarctica in a specially protected area,



(c) Entering any specially protected area or site of special scientific interest,

(d) Importing into or exporting from the United States any mammal or bird native to Antarctica or any plant collected in a specially protected area, and

(e) Introducing into Antarctica any non-indigenous plant or animal.

#### § 670.3 Definitions.

In this part:

"Act" means the Antarctic Conservation Act of 1978, Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401 et. seq.)

"Agreed Measures" means the Agreed Measures for Conservation of Antarctic Fauna and Flora, as recommended for approval at the Third Antarctic Treaty Consultative Meeting, and as amended in accord with Article IX (1) of the Treaty.

"Antarctica" means the area south of 60 degrees south latitude.

"Collect" means to cut, sever, or move any native plant, or to attempt to engage in any such action.

"Director" means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

"Foreign person" means any individual who is a citizen or national of a foreign nation; any corporation, partnership, trust, association or other legal entity existing or organized under the laws of a foreign nation; any department, agency, or other instrumentality of any foreign nation and any office, employee, or agent of any such instrumentality.

"Management plan" means the restrictions applicable to activities in Sites of Special Scientific Interest.

"Native bird" means a member of any species of the class *Aves*, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this Part. It includes any part, product, egg, or offspring of or the dead body or parts thereof excluding fossils.

"Native mammal" means a member of any species of the class *Mammalia*, except species regulated by the International Whaling Commission, which is indigenous to Antarctica or occurs there through natural agencies of dis-

persal that is designated in Subpart D of this part. It includes any part, product, egg, or offspring of or the dead body or parts excluding fossils.

"Native plant" means any kind of vegetation at any stage of its life cycle indigenous to Antarctica or occurring there through natural agencies of dispersal, including seeds but excluding fossils, that is designated in Subpart F of this part.

"Site of Special Scientific Interest" means an area of unique value for scientific investigation designated in Subpart H of this part as needing protection from interference.

"Specially Protected Area" means an area of outstanding scientific or ecological interest designated in Subpart C of this part.

"Specially Protected Species" means any species of native mammal or native bird that is approved by the United States for special protection under the Agreed Measures and is designated in Subpart E of this part.

"Take" means to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag any native mammal or native bird, or to attempt to engage in such conduct.

"Treaty" means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959.

"United States" means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands, including the Government of the Northern Mariana Islands.

"United States citizen" means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; any department, agency, or other instrumentality of the Federal Government or of any State; and any officer, employee, or agent of any such entity or instrumentality.

**Subpart B—Prohibited Acts,  
Exceptions**

**§ 670.4 Prohibited acts.**

Unless a permit has been issued pursuant to Subpart C of this part or unless one of the exceptions stated in §§ 670.5 through 670.8 is applicable, it is unlawful to commit, attempt to commit, or cause to be committed any of the acts described in paragraphs (a) through (h) of this section.

(a) *Taking any native mammal or native bird.* It is unlawful for any United States citizen to take within Antarctica any native mammal or native bird.

(b) *Collecting native plants.* It is unlawful for any United States citizen to collect a native plant in a specially protected area.

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter certain sites of special scientific interest.

(d) *Possession and transfer of native mammals, plants or birds.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to possess, sell, offer for sale, deliver, receive, carry, transport, or ship by any means whatever any native plant collected in a specially protected area, or any native mammal or native bird taken in Antarctica.

(e) *Import into or export from the United States.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to import into the United States or export from the United States any native mammal or native bird or any native plant collected in a specially protected area.

(f) *Introduction of non-indigenous animals and plants into Antarctica.* It is unlawful for any United States citizen to introduce into Antarctica any animal or plant that is not indigenous to Antarctica as specified in Subpart J of this part, except as provided in § 670.7 and 670.8.

(g) *Violation of regulations.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States

to violate the regulations set forth in this Part.

(h) *Violation of permit conditions.* It is unlawful for any permit holder, whether or not a United States citizen, to violate any term or condition of any permit issued under Subpart C of this Part.

**§ 670.5 Exceptions in extraordinary circumstances.**

(a) *Human life.* No act described in § 670.4 shall be unlawful if committed under emergency circumstances to prevent the loss of human life.

(b) *Aiding or salvaging native mammals or native birds.* The prohibition on taking shall not apply to taking native mammals or native birds if such action is necessary to:

(1) Aid a sick, injured, or orphaned specimen;

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(c) *Reporting.* Any actions taken under the exceptions in this section shall be reported promptly to the Director.

**§ 670.6 Prior possession exception.**

(a) *Exception.* Section 670.4 shall not apply to (1) any native mammal, bird or plant which is held in captivity on or before October 28, 1978, or (2) any offspring of any such mammal, bird, or plant.

(b) *Presumption.* With respect to any prohibited act set forth in § 670.4 which occurs after April 29, 1979, the Act creates a rebuttable presumption that the native mammal, native bird, or native plant involved in such act was not held in captivity on or before October 28, 1978, or was not an offspring referred to in paragraph (a) of this section.

**§ 670.7 Food exception.**

Paragraph (f) of § 670.4 shall not apply to the introduction of animals and plants into Antarctica for use as food so long as animals and plants used for this purpose are kept under controlled conditions. This exception shall not apply to living non-indigenous species of birds.

## § 670.8 Foreign permit exceptions.

Paragraphs (d) and (f) of § 670.4 shall not apply to transporting, carrying, receiving, or possessing native mammals, native plants, or native birds or to the introduction into Antarctica of non-indigenous animals and plants when conducted by an agency of the U.S. Government on behalf of a foreign national operating under a permit issued by a foreign government to give effect to the Agreed Measures.

**Subpart C—Permits**

## § 670.9 Applications for permits.

(a) *General content of permit applications.* All applications for a permit shall be dated and signed by the applicant and shall contain the following information:

(1) The name and address of the applicant;

(i) Where the applicant is an individual, the business or institutional affiliation the applicant; and

(ii) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of its president or principal officer.

(2) The scientific names and the numbers of native plants to be collected in a specially protected area; or the scientific names and the numbers of native mammals or native birds to be taken;

(3) A description of the native mammals, native birds, or native plants to be taken or collected, including as appropriate the age, size, sex, and condition, e.g., whether pregnant or nursing;

(4) A complete description of the location, time period, and manner of taking or collecting, including the proposed access to the location;

(5) Whether the native mammals, birds, or plants, or parts of them are to be imported into the United States, and if so, their ultimate disposition;

(6) Where the application is for the introduction of non-indigenous plants and animals, the scientific name and the number to be introduced;

(7) Whether agents as referred to in § 670.12 will be used; and

(8) The desired effective date of the permit.

(b) *Content of specific permit applications.* In addition to the general information required for permit applications set forth in this subpart, the applicant must submit additional information relating to the specific action for which the permit is being sought. These additional requirements are set forth in the sections of this part dealing with the subject matter of the permit applications as follows:

Native Mammals and Native Birds—§ 670.16.

Specially Protected Species—§ 670.21.

Native Plants—§ 670.25.

Specially Protected Areas—§ 670.29.

Sites of Special Scientific Interest—§ 670.33.

Import into or Export from the U.S.—§ 670.38.

Introduction on Non-Indigenous Plants and Animals—§ 670.42.

(c) *Certification.* Applications for permits shall include the following certification:

I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. Any false statement will subject me to the criminal penalties of 18 U.S.C. 1001.

(d) *Address to which applications should be sent.* Each application shall be in writing, addressed to:

Permit Office, Division of Polar Programs,  
National Science Foundation, Washington,  
D.C. 20550.

(e) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as determined to be relevant to the processing of the application.

(f) *Withdrawal.* An applicant may withdraw the application at any time.

(g) *Publication of permit applications.* The Director shall publish notice in the **FEDERAL REGISTER** of each application for a permit. The notice shall invite the submission by interested parties, within 30 days after the date of publication of the notice, of written data, comments, or views with respect to the application. Informa-



tion received by the Director as a part of any application shall be available to the public as a matter of public record.

§ 670.10 General issuance criteria.

Upon receipt of a complete and properly-executed application for a permit and the expiration of the applicable public comment period, the Director will decide whether to issue the permit. In making this decision, the Director will consider, in addition to the specific criteria set forth in the appropriate subparts of this part:

(a) Whether the authorization requested meets the objectives of the Act and the requirements of these regulations;

(b) The judgment of persons having expertise in matters germane to the application; and

(c) Whether the applicant has failed to disclose material information required or has made false statements about any material fact in connection with his application.

§ 670.11 Permit administration.

(a) *Issuance of permits.* The Director may approve an application in whole or in part. Permits shall be issued in writing and be signed by the Director. Each permit may contain such terms and conditions as are consistent with the Act and this part.

(b) *Denial.* The applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this subpart and the subpart governing the activities sought to be carried out under the modified permit. Any application for modification of a permit that involves a material change beyond the terms originally requested will normally be

subject to the same procedures as a new application.

(d) *Notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the **FEDERAL REGISTER**.

(e) *Agents of the permit holder.* The Director may authorize the permit holder to designate agents to act on behalf of the permit holder.

(f) *Marine mammals, endangered species and migratory birds.* If the Director receives a permit application involving any native mammal which is a marine mammal as defined by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)), any species which is an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or any native bird which is protected under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.), the Director shall submit a copy of the application to the Secretary of Commerce or to the Secretary of the Interior, as appropriate. If the appropriate Secretary determines that a permit should not be issued pursuant to any of the cited acts, the Director shall not issue a permit. The Director shall inform the applicant of any denial by the appropriate secretary and no further action will be taken on the application. If, however, the appropriate Secretary issues a permit pursuant to the requirements of the cited acts, the Director still must determine whether the proposed action is consistent with the Act and these regulations.

§ 670.12 Conditions of permits.

(a) *Possession of permits.* Permits issued under these regulations, or copies of them, must be in the possession of persons to whom they are issued and their agents when conducting the authorized action.

(b) *Display of permits.* Any permit issued shall be displayed for inspection upon request to the Director, designated agents of the Director, or any person with enforcement responsibilities.

(c) *Filing of reports.* Permit holders may be required to file reports of the



activities conducted under a permit. Reports shall be submitted to the Director not later than June 30 for the preceding 12 months.

#### § 670.13 Modification, suspension, and revocation.

(a) The Director may modify, suspend, or revoke, in whole or in part, any permit issued under this section:

(1) In order to make the permit consistent with any change to any regulation in this part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the purpose of the Act and these regulations; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) Whenever the Director proposes any modifications, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(c) Notice of the modification, suspension, or revocation of any permit by the Director shall be published in the *FEDERAL REGISTER* within 10 days from the date of the Director's decision.

#### § 670.14 [Reserved]

### Subpart D—Native Mammals and Native Birds

#### § 670.15 Specific issuance criteria.

With the exception of specially protected species of mammals and birds designated in Subpart E of this part, permits to take a mammal or bird in Antarctica designated as a native mammal in § 670.17 or as a native bird in § 670.18 may be issued:

(a) Only for the purpose of providing—(1) Specimens for scientific study or scientific information, or

(2) Specimens for museums, zoological gardens, or other educational or cultural institutions or uses;

(b) Shall ensure, as far as possible, that—(1) No more native mammals or native birds are taken in any year than can normally be replaced by natural reproduction in the following breeding season, and

(2) The variety of species and the balance of the natural ecological systems within Antarctica are maintained; and

(3) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

#### § 670.16 Contents of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to take a native mammal or native bird shall include a complete description of the project including the purpose of the proposed taking, the use to be made of the native mammals or native birds, and the ultimate disposition of the native mammals or native birds. Sufficient information must be provided to establish that the taking, transporting, carrying, or shipping will be humane.

#### § 670.17 Designation of native mammals.

The following are designated native mammals:

Dolphin:

Hourglass—*Lagenorhynchus cruciger*.

Seal:

Crabeater—*Lobodon carcinophagus*.

Elephant—*Mirounga leonina*.

Kerguelen Fur—*Arctocephalus gazella*.\*

Leopard—*Hydrurga leptonyx*.

Ross—*Ommatophoca rossi*.\*

Weddell—*Leptonychotes weddelli*.

Whale:

Arnoux's Beaked—*Berardius arnuxii*.

Killer—*Orcinus orca*.

Long-finned Pilot—*Globicephala melaena*.

Southern Bottlenose—*Hyperoodon planifrons*.

\*These species of mammals have been designated as specially protected species and are subject to Subpart E of this part.

#### § 670.18 Designation of native birds.

The following are designated native birds:

## § 670.20

### Albatross:

- Black-browed—*Diomedea melanophris*.
- Gray-headed—*Diomedea chrysostoma*.
- Light-mantled Sooty—*Phoebastria palpebrata*.
- Wandering—*Diomedea exulans*.

### Fulmer:

- Northern Giant—*Macronectes halli*.
- Southern—*Fulmarus glacialis*.
- Southern Giant—*Macronectes giganteus*.

### Gull:

- Southern Black-backed—*Larus dominicanus*.

### Jaeger:

- Parasitic—*Stercorarius parasiticus*.
- Pomarine—*Stercorarius pomarinus*.

### Penguin:

- Adelie—*Pygoscelis adeliae*.
- Chinstrap—*Pygoscelis antarctica*.
- Emperor—*Aptenodytes forsteri*.
- Gentoo—*Pygoscelis papua*.
- King—*Aptenodytes patagonicus*.
- Macaroni—*Eudyptes chrysolophus*.
- Rockhopper—*Eudyptes crestatus*.

### Petrel:

- Antarctic—*Thalassoica antarctica*.
- Black-bellied Storm—*Fregetta tropica*.
- Blue—*Halobaena caerulea*.
- Gray—*Procellaria cinerea*.
- Great-winged—*Pterodroma macroptera*.
- Kerguelen—*Pterodroma brevirostris*.
- Mottled—*Pterodroma inexpectata*.
- Snow—*Pagodroma nivea*.
- Soft-plumaged—*Pterodroma mollis*.
- South-Georgia Diving—*Pelecanoides georgicus*.
- White-bellied Storm—*Fregetta grallaria*.
- White-chinned—*Procellaria aequinoctialis*.
- White-headed—*Pterodroma lessoni*.
- Wilson's Storm—*Oceanites oceanicus*.

### Pigeon:

- Cape—*Daption capense*.

### Pintail:

- South American Yellow-billed—*Anas georgica spinicauda*.

### Prion:

- Antarctic—*Pachyptila desolata*.
- Narrow-billed—*Pachyptila belcheri*.

### Shag:

- Blue-eyed—*Phalacrocorax atriceps*.

### Shearwater:

- Sooty—*Puffinus griseus*.

### Skua:

- Brown—*Catharacta lonnbergi*.
- South Polar—*Catharacta maccormicki*.

### Swallow:

- Barn—*Hirundo rustica*.

### Sheathbill:

- American—*Chionis alba*.

### Tern:

- Antarctic—*Sterna vittata*.
- Arctic—*Sterna paradisaea*.

## Title 45—Public Welfare

## § 670.19 [Reserved]

### Subpart E—Specially Protected Species of Mammals and Birds

## § 670.20 Specific issuance criteria.

Permits authorizing the taking of mammals or birds designated as a specially protected species of mammals and birds in § 670.22 may only be issued if

(a) There is a compelling scientific purpose for such taking;

(b) The actions allowed under any such permit will not jeopardize the existing natural ecological system, or the survival of that species; and

(c) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

## § 670.21 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to take a specially protected species shall include the following in the application:

(a) A detailed scientific justification of the need for taking the specially protected species, including a discussion of possible alternative species;

(b) Information demonstrating that the proposed action will not jeopardize the existing natural ecological system or the survival of that species; and

(c) Information establishing that the taking, transplanting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

## § 670.22 Designation of specially protected species of mammals and birds.

The Act states that the Director shall designate as a specially protected species any native species of mammal or bird which is approved by the United States for special protection under the Agreed Measures. The following two species have been so approved and are hereby designated specially protected species:

### Common Name and Scientific Name

Kerguelen Fur Seal—*Arctocephalus tropicales gazella*.

Ross Seal—*Ommatophoca rossi*.

## § 670.23 [Reserved]

**Subpart F—Native Plants**

## § 670.24 Specific issuance criteria.

Permits authorizing the collection of any native plant designated in § 670.26 from a specially protected area designated in § 670.30 may be issued only if

(a) There is a compelling scientific purpose for such collection which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the natural ecological system existing in that area.

## § 670.25 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to collect a native plant in a specially protected area shall include the following in the application:

(a) A detailed scientific justification of the need for the collection, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

## § 670.26 Designation of native plants.

All plants found in Antarctica are designated native plants, including.

Fungi—Lichens.

Vascular Plants—Marine algae.

Bryophytes—Freshwater algae.

## § 670.27 [Reserved]

**Subpart G—Specially Protected Areas**

## § 670.28 Specific issuance criteria.

Permits authorizing entry into any specially protected area designated in § 670.30 of this title may be issued only if

(a) There is a compelling scientific purpose for such entry which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the natural ecological system existing in that area.

No permit shall be issued that allows the operation of any surface vehicle in a specially protected area.

## § 670.29 Content of permit applications.

In addition to the information required in Subpart C of this part, and applicant seeking a permit to enter a specially protected area shall include the following in the application.

(a) A detailed scientific justification of the need for such entry, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

## § 670.30 Designation of specially protected areas.

The Act states the Director shall designate as a specially protected area, each area identified under the Agreed Measures as needing special protection. The following areas have been so identified and are designated as specially protected areas:

(a) Taylor Rookery, MacRobertson Land situated at Latitude 67° 26' South, Longitude 60° 50' East.

(b) Rookery Islands in Holme Bay.

(c) Ardery Island and Odbert Island in Vincennes Bay.

(d) Sabrina Island and Balleny Islands in the Ross Sea.

(e) Beaufort Island in the Ross Sea.

(f) Cape Hallett in Victoria Land.

(g) Dion Islands in Marguerite Bay.

(h) Green Island in the Berthelot Islands.

(i) Cape Shirreff on Livingston Island.

(j) Moe Island in the South Orkney Islands.

(k) Lynch Island in the South Orkney Islands.

(l) Powell Island (southern portion only), Fredriksen Island, Michelsen Island, Christofferson Island, Grey Island and all unnamed islands within one mile of these islands; all of which are part of the South Orkney Islands.

(m) Coppermine Peninsula on Robert Island.

(n) Litchfield Island in the Palmer Archipelago.

Maps specifying these areas in greater detail may be obtained from the Director.



§ 670.31 [Reserved]

**Subpart H—Sites of Special Scientific Interest**

§ 670.32 Specific issuance criteria.

Sites of Special Scientific Interest, designated in § 670.34, are sites where scientific investigations are being conducted or are planned and there is a demonstrable risk of interference which would jeopardize those investigations. Certain of these sites do not require limitations on entry to protect their value for scientific investigations. No permit is required for entry into these sites but entrants must comply with the management plan. Permits to enter sites for which an entry permit is required may be issued only if the proposed entry is consistent with the management plan:

§ 670.33 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to enter a site of special scientific interest shall include the following in the application:

- (a) The justification for such entry;
- (b) Information demonstrating that the proposed action will not jeopardize the unique scientific value of the area; and
- (c) A statement demonstrating the consistency of the proposed action with the management plan.

§ 670.34 Designation of sites of special scientific interest and management plans for those sites.

The Act states that the Director shall designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII-3 of the Eighth Antarctic Treaty Consultative Meeting. The Act also requires the Director to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the following areas are designated as sites of special scientific interest to be managed in accordance with the manage-

ment plan set forth after each designation:

(a) *Sites of Special Scientific Interest Requiring a Permit for Entry.*—(1)(i) Cape Royds on Ross Island, (ii) Cape Crozier on Ross Island, and (iii) Haswell Island Management Plan. Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird from this Site.

(2) Fildes Peninsula on King George Island Management Plan. The operation of surface vehicles and the landing of helicopters are not permitted within the Site except in an emergency. No buildings or other facilities may be erected on this Site. No rock samples may be obtained unless authorized in the entry permit. Such authorization shall be given only for compelling scientific purposes.

(3) Byers Peninsula on Livingston Island Management Plan. The operation of surface vehicles is not permitted within the Site except in an emergency. No buildings or other facilities may be erected on this Site. No rock samples may be obtained unless authorized in the entry permit. Such authorization shall be given only for compelling scientific purposes.

(4) Barwick Valley in Victoria Land Management Plan. Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(b) *Sites of Special Scientific Interest not Requiring a Permit for Entry.*—

(1) Arrival Heights on Ross Island Management Plan. Vehicles and pedestrians shall keep to designated tracks. No radio frequency transmitting equipment other than low power transceivers for local essential communication may be installed within the Site.

(c) *Maps.*—Maps identifying the designated Sites of Special Scientific In-



terest in greater detail are available from the Director.

§ 670.35 [Reserved]

**Subpart I—Import Into and Export From the United States**

§ 670.36 Specific issuance criteria for imports.

Subject to compliance with other applicable law, any person who takes a native mammal or native bird or collects a native plant under a permit issued under these regulations may import it into the United States unless the Director finds that importation would not further the purpose for which it was taken or collected. If the importation is for a purpose other than that for which the native mammal or native bird was taken or the native plant collected, the Director may permit importation upon a finding that importation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

§ 670.37 Specific issuance criteria for exports.

The Director may permit export from the United States of any native plant taken from a specially protected area or of any native mammal or native bird upon a finding that exportation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

§ 670.38 Contents of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to import into or export from the United States a native plant taken from a specially protected area, a native mammal, or a native bird shall include the following in the application:

(a) Information demonstrating that the import or export would further the purposes for which the species was taken or collected; or

(b) Information demonstrating that the import or export is consistent with the purposes of the Act or these regulations; and

(c) A statement as to which U.S. port will be used for the import or export. The application shall also include information describing the intended ultimate disposition of the imported or exported item.

§ 670.39 Entry and exit ports.

Any native plant collected in a specially protected area and any native mammal or native bird imported into or exported from the United States must enter or leave the United States at ports designated by the Secretary of Interior in 50 CFR Part 14. The ports presently designated are:

- (a) New York, New York,
- (b) Miami, Florida,
- (c) Chicago, Illinois,
- (d) San Francisco, California,
- (e) New Orleans, Louisiana,
- (f) Seattle, Washington,
- (g) Honolulu, Hawaii.

Permits to import or export at non-designated ports may be sought from the Secretary of Interior pursuant to Subpart C, 50 CFR Part 14.

§ 670.40 [Reserved]

**Subpart J—Introduction of Non-indigenous Plants and Animals**

§ 670.41 Specific issuance criteria.

For purposes consistent with the Act, only the following plants and animals may be considered for a permit allowing their introduction into Antarctica:

- (a) sledge dogs;
- (b) domestic animals and plants; and
- (c) laboratory animals and plants including viruses, bacteria, yeasts, and fungi.

Living non-indigenous species of birds shall not be introduced into Antarctica.

§ 670.42 Content of permit applications.

Applications for the importation of plants and animals into Antarctica must describe (a) the need for the plants or animals, (b) how the applicant will ensure that the plants or animals will not harmfully interfere with the natural system, and (c) how the plants or animals will be removed

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from Antarctica or destroyed after they have served their purpose.

**§ 670.43 Conditions of permits.**

(a) *General.* All permits allowing the introduction of non-indigenous plants and animals will require that the animal or plant be kept under controlled conditions to prevent harmful interference with the natural system and that after serving its purpose the plant or animal shall be removed from Antarctica or destroyed in a manner that protects the natural system of Antarctica.

**Title 45—Public Welfare**

(b) *Dogs.* In addition to the requirements of paragraph (a) of this section, all dogs imported into Antarctica shall be inoculated against the following diseases:

- (1) Distemper;
- (2) Contagious canine hepatitis;
- (3) Rabies; and
- (4) Leptospirosis (*L. canicola* and *L. icterohaemorrhagiae*).

Each dog shall be inoculated at least two months before importation, and a certificate of inoculation shall accompany each dog. No dog shall be allowed to run free in Antarctica.

**§ 670.44 [Reserved]**

## CHAPTER VII—COMMISSION ON CIVIL RIGHTS

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## **PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION**

### **Subpart A—Operations and Functions**

#### **Sec.**

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**AUTHORITY:** Secs. 101-106, 71 Stat. 634-636, as amended (42 U.S.C. 1975-1975e).

**SOURCE:** 44 FR 75148, Dec. 19, 1979, unless otherwise noted.

### **Subpart A—Operations and Functions**

#### **§ 701.1 Establishment.**

The United States Commission on Civil Rights (hereinafter referred to as the "Commission") is a bipartisan agency of the executive branch of the Government. Established under the Civil Rights Act of 1957, 71 Stat. 634, the Commission derives its authority from that Act and from amendments to it in the Civil Rights Act of 1960, 74 Stat. 86; in the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Commission Act of 1978, 92 Stat. 1067. The statutes are codified in 42 U.S.C. 1975-1975e. (Hereinafter the 1957 Act as amended will be referred to as "the Act.")

#### **§ 701.2 Responsibilities.**

(a) The Commission's authority under Section 104(a) of the Act may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, handicap, or national origin;

(2) To study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national

origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(4) To serve as a national clearing-house for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap or national origin;

(5) To investigate sworn allegations that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination.

(b) Under Section 104(c) of the Act the Commission is required to: submit interim reports to the President and to the Congress at such times as the Commission, the Congress, or the President shall deem desirable and submit to the President and the Congress a final report of its activities, findings, and recommendations not later than the last day of fiscal year 1983.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses; to consult with governors, attorneys general, other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

[44 FR 75148, Dec. 19, 1979; 44 FR 76798, Dec. 23, 1979]

### **Subpart B—Organization Statement**

#### **§ 701.11 Membership of the Commission— Staff Director.**

(a) The Commission is composed of six members, not more than three of whom may be of the same political party, appointed by the President by



and with the advice and consent of the Senate.

(b) The Chairman and Vice Chairman of the Commission are designated by the President, the Vice Chairman acting as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers, and any vacancy is filled in the same manner and is subject to the same limitation with respect to party affiliations as previous appointments.

(d) Four members of the Commission constitute a quorum.

(e) A Staff Director for the Commission is appointed by the President (after consultation with the Commission) by and with the advice and consent of the Senate. The Staff Director is the chief executive officer of the agency.

#### § 701.12 Staff Organization.

The organization of the Commission is established as follows:

(a) *Office of the Staff Director.* Under the direction of the Staff Director, this office plans the agency's programs, directs, supervises, and coordinates the work of other offices; reports plans, programs, and activities of the agency to the Commission; manages the administrative affairs of the agency and represents the agency in relations with the Executive Office of the President, the Congress and other Federal agencies. Special units reporting to the Office of the Staff Director are:

(1) *Equal Employment Opportunity Unit.* Under the direction of the Equal Employment Opportunity Officer, this unit is responsible for the agency's EEO and affirmative action programs; advises employees regarding the applicability of Office of Personnel Management and other relevant equal employment opportunity regulations and is responsible for the agency troubled employee program.

(2) *Solicitor's Unit.* Under the direction of the Solicitor, this unit is responsible for administrative law matters, including contracts, openness in government, government ethics and personnel.

(b) *Office of General Counsel.* Under the direction of the General Counsel, this office serves as legal counsel to the Commissioners and to the agency; plans and conducts hearings for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or reviews proposals for legislative and executive action and reviews all agency publications and congressional testimony for legal sufficiency.

(c) *Office of Management.* Under the direction of the Assistant Staff Director for Administration, this office is responsible for all administrative, management and facilitative services necessary for the efficient operation of the agency. Its units, headed by division directors, include the Administrative Services Division, the Budget and Fiscal Division, the Management Analysis Division, the Personnel Division, the Publications Management Division, and the National Clearinghouse Library Division.

(d) *Office of Program Planning and Evaluation.* Under the direction of the Assistant Staff Director for Program Planning and Evaluation, this office is responsible for: coordinating the agency's program planning process; conducting program evaluations to assess the impact of the Commission's projects on problems addressed; and coordinating the monthly program reporting system. Its units, headed by Division Directors, are the Program Development and Planning Division and the Program Evaluation Division.

(e) *Office of Federal Civil Rights Evaluation.* Under the direction of the Assistant Staff Director for Federal Civil Rights Evaluation, this office is responsible for: monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government and forwarding complaints alleging denials of civil rights to Federal agencies having appropriate jurisdiction.

(f) *Office of Program and Policy Review.* Under the direction of the Assistant Staff Director for Program and Policy Review, this office is responsible for: planning, conducting or stimulating studies to advance basic knowledge of the extent, causes and consequences of civil rights denials; prepar-

ing monographs dealing with subjects which are current national civil rights issues; monitoring civil rights developments; planning and conducting consultations on the civil rights implications of Federal programs and policies and/or current civil rights issues; and providing staff assistance as needed to other offices of the Commission.

(g) *Office of Congressional and Public Affairs.* Under the direction of the Assistant Staff Director for Congressional and Public Affairs, this Office is comprised of three divisions:

(1) The Press and Communications Division is responsible for liaison with and dissemination of information concerning the Commission to the news media and the preparation and dissemination of various periodical publications on civil rights issues.

(2) The Congressional Liaison Division is responsible for responding to requests for information from members of Congress, preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee or a member and assisting members of the Commission and staff in liaison with members of Congress and committees of Congress.

(3) The Community Relations Division organizes, plans and manages conferences at which the Commission receives information regarding civil rights issues; establishes and maintains liaison with government and private civil rights agencies; and represents the Commission at government and private organization conferences and conventions.

(h) *Office of Regional Programs.* Under the direction of the Assistant Staff Director for Regional Programs, this office is responsible for: directing and coordinating the programs and work of the regional offices and State Advisory Committees to the United States Commission on Civil Rights, and maintaining liaison between the regional offices and the various headquarters offices of the Commission.

#### § 701.13 Regional offices.

Each regional office of the Commission is directed by a regional director.

The address of each office and the States which they serve are as follows:

Region I: U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, FTS (8) 223-4671—(617) 223-4671; Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II: U.S. Commission on Civil Rights, 26 Federal Plaza, Room 1639, New York, N.Y. 10007, FTS (8) 264-0400—(212) 264-0543; New Jersey and New York.

Region III: U.S. Commission on Civil Rights, 2120 L Street, N.W., Room 510, Washington, D.C. 20037, FTS (8) 254-6717—(202) 254-6670; Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV: U.S. Commission on Civil Rights, Citizens Trust Bank Building, 75 Piedmont Avenue, N.E., Room 632, Atlanta, Georgia 30303, FTS (8) 242-4391—(404) 221-4344; Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V: U.S. Commission on Civil Rights, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, FTS (8) 353-7371—(312) 353-7371; Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI: U.S. Commission on Civil Rights, Heritage Plaza, 418 South Main, San Antonio, Texas 78204, FTS (8) 730-5570—(512) 225-4810; Arkansas, Louisiana, Oklahoma, Texas, and New Mexico.

Region VII: U.S. Commission on Civil Rights, Old Federal Office Building, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106, FTS (8) 758-5253—(816) 374-5253.

Region VIII: U.S. Commission on Civil Rights, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colorado 80202, FTS (8) 327-2211—(303) 837-2211; Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX: U.S. Commission on Civil Rights, 312 North Spring Street, Room 1015, Los Angeles, California 90012, FTS (8) 798-3437—(213) 688-5705; Arizona, California, Hawaii, and Nevada.

Region X: U.S. Commission on Civil Rights, 915 Second Avenue, Room 2852, Seattle, Washington 98174, FTS (8) 399-1426—(206) 442-1246; Alaska, Idaho, Oregon, and Washington.

**PART 702—RULES ON HEARINGS, REPORTS AND MEETINGS OF THE COMMISSION****Subpart A—Hearings and Reports****Sec.**

- 702.1 Definitions.
- 702.2 Authorization for hearing.
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**Subpart B—Meetings**

- 702.50 Purpose and scope.
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- 702.52 Open meeting requirements.
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- 702.55 Public announcement of meetings.
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**Subpart A—Hearings and Reports**

**AUTHORITY:** Secs. 101-106, 71 Stat. 634-636, as amended; 42 U.S.C. 1975-1975e; Pub. L. 94-409, 90 Stat. 1241.

**SOURCE:** 32 FR 4063, Mar. 15, 1967, unless otherwise noted, Designated Subpart A at 42 FR 14108, Mar. 15, 1977.

**§ 702.1 Definitions.**

For purposes of the following Rules on Hearings of the United States Commission on Civil Rights, the following definitions shall apply, unless otherwise provided:

(a) "The Act" shall refer to the Civil Rights Act of 1957, 71 Stat. 634, as amended.

(b) "The Commission" shall refer to the United States Commission on Civil Rights or, as provided in § 702.2, to any authorized subcommittee thereof.

(c) "The Chairman" shall refer to the Chairman of the Commission or authorized subcommittee thereof or to any acting Chairman of the Commission or of such subcommittee.

(d) "Proceeding" shall refer collectively to any public session of the Commission and any executive session held in connection therewith.

(e) "Hearing" shall refer collectively to a public session of the Commission and any executive session held in connection therewith, but shall not include a session held for the sole purpose of receiving subpoenaed documents.

(f) "The rules in this part" shall refer to the Rules on Hearings of the Commission.

(g) "Report" refers to statutory reports or portions thereof issued pursuant to Section 104(c) of the Civil Rights Act of 1957, as amended.

(h) "Verified answer" refers to an answer the truth of which is substantiated by oath or affirmation attested to by a notary public or other person who has legal authority to administer oaths.

[32 FR 4063, Mar. 15, 1967, as amended at 36 FR 5702, Mar. 27, 1971; 44 FR 75149, Dec. 19, 1979]

**§ 702.2 Authorization for hearing.**

Under section 105(f) of the Act the Commission or, on the authorization of the Commission, any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of the Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable; and the holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of four members is present.

**§ 702.3 Notice of hearing.**

At least 30 days prior to the commencement of any hearing, the Commission shall cause to be published in



the **FEDERAL REGISTER** notice of the date on which such hearing is to commence, the place at which it is to be held, and the subject of the hearing.

§ 702.4 Subpenas.

(a) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued by the Commission over the signature of the Chairman and may be served by any person designated by the Chairman.

(b) A witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the rules in this part at the time of service of the subpoena.

(c) The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a place outside the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpoenas for the attendance and testimony of witnesses and the production of written or other matter at a place within 50 miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(d) The Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses except as otherwise provided in § 702.6(e).

(e) Requests for subpoena shall be in writing, supported by a showing of the general relevance and materiality of the evidence sought. Witness fees and mileage, computed pursuant to § 702.15, shall be paid by the person at whose instance a witness is subpoenaed.

(f) Subpenas shall be issued at a reasonably sufficient time in advance of their scheduled return, in order to give subpoenaed persons an opportunity to prepare for their appearance and to employ counsel, should they so desire.

(g) No subpoenaed document or information contained therein shall be made public unless it is introduced

into and received as part of the official record of the hearing.

[32 FR 4063, Mar. 15, 1967, as amended at 44 FR 75149 Dec. 19, 1979]

§ 702.5 Conduct of proceedings.

(a) The Chairman shall announce in an opening statement the subject of the proceeding.

(b) Following the opening statement, the Commission shall first convene in executive session if one is required pursuant to the provisions of § 702.6.

(c) The Chairman shall, subject to the approval of the Commission—

(1) Set the order of presentation of evidence and appearance of witnesses;

(2) Rule on objections and motions;

(3) Administer oaths and affirmations;

(4) Make all rulings with respect to the introduction into or exclusion from the record of documentary or other evidence;

(5) Regulate the course and decorum of the proceeding and the conduct of the parties and their counsel to insure that the proceedings are conducted in a fair and impartial manner.

(d) Proceedings shall be conducted with reasonable dispatch and due regard shall be had for the convenience and necessity of witnesses.

(e) The questioning of witnesses shall be conducted only by Members of the Commission, by authorized Commission staff personnel, or by counsel to the extent provided in § 702.7.

(i) In addition to persons served with a copy of the rules in this part pursuant to §§ 702.4 and 702.6, a copy of the rules in this part will be made available to all witnesses.

(g) The Chairman may punish breaches of order and decorum by censure and exclusion from the proceedings.

§ 702.6 Executive session.

(a) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session.



(b) The Commission shall afford any persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by them, before deciding to use such evidence or testimony.

(1) Such person shall be served with notice in writing of the date, time, and place made available for the appearance of witnesses at executive session, at least 10 days prior to such date, or where service is by mail at least 14 days prior to such date. This notice shall be accompanied by a copy of the rules in this part and by a brief summary of the information which the Commission has determined may tend to defame, degrade, or incriminate such person.

(2) The notice, summary, and rules in this part shall be served personally by depositing the same in the United States mail as certified mail, or by leaving a copy thereof at the last known residence or business address of such person.

(3) The date of service, for purposes of this section, shall be the day when the material is deposited in the United States mail or is delivered in person, as the case may be. When service is made by certified mail, the return post office receipt shall be proof of service; in all other cases, the acknowledgment of the party served, or the verified return of the one making service shall be proof of the same.

(c) If a person receiving notice under this section notifies the Commission within five days of service of such notice, or where service is by mail within eight days of service of such notice, that the time scheduled therein constitutes a hardship, the Commission may, in its discretion, set a new time for such person's appearance at the executive session.

(d) In the event such persons fail to appear at executive session at the time and place made available under paragraph (b) or (c) of this section, they shall not be entitled to another opportunity to appear at executive session, except as provided in § 702.11.

(e) If such persons intend to submit sworn statements of themselves or others, or if they intend that witnesses

appear in their behalf at executive session, they shall, no later than 48 hours prior to the time set under paragraph (b) or (c) of this section, submit to the Commission, all such statements and a list of all witnesses. The Commission will inform such persons whether the number of witnesses requested is reasonable within the meaning of paragraph (b) of this section. In addition, the Commission will receive and dispose of requests from such persons to subpoena other witnesses. Requests for subpoenas shall be made sufficiently in advance of the scheduled executive session as to afford persons subpoenaed reasonable notice of their obligation to appear at that session. Subpoenas returnable at executive session shall be governed by the provisions of § 702.4.

(f) Persons for whom an executive session has been scheduled, and persons compelled to appear at such session, may be represented by counsel at such session to the extent provided by § 702.7.

(g) Attendance at executive session shall be limited to Members of the Commission, authorized Commission staff personnel, witnesses and their counsel at the time scheduled for their appearance, and such other persons whose presence is requested or consented to by the Commission.

(h) In the event the Commission determines to release or to use evidence or testimony which it has determined may tend to defame, degrade, or incriminate any persons, in such a manner as to reveal publicly their identity, such evidence or testimony, prior to such public release or use, will be presented at a public session, and the Commission will afford them an opportunity to appear as voluntary witnesses or to file a sworn statement in their own behalf and to submit brief and pertinent sworn statements of others.

[32 FR 4063, Mar. 15, 1967, as amended at 44 FR 75150, Dec. 19, 1979]

#### § 702.7 Counsel.

(a) Persons compelled to appear in person before the Commission and any witness appearing at a public session of the Commission will be accorded the right to be accompanied and ad-

vised by counsel, who will have the right to subject their clients to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections.

(b) For the purpose of this section, "counsel" shall mean an attorney at law admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States.

(c) Failure of any persons to obtain counsel shall not excuse them from attendance in response to a subpoena, nor shall any persons be excused in the event their counsel is excluded from the proceeding pursuant to § 702.5(g). In the latter case, however, such persons shall be afforded a reasonable time to obtain other counsel, said time to be determined by the Commission.

[32 FR 4063, Mar. 15, 1967, as amended at 44 FR 75150, Dec. 19, 1979]

**§ 702.8 Evidence at Commission proceedings.**

(a) The rules of evidence prevailing in courts of law or equity shall not control proceedings of the Commission.

(b) Where a witness testifying at a public session of a hearing or a session for return of subpoenaed documents offers the sworn statements of other persons, such statements, in the discretion of the Commission, may be included in the record, provided they are received by the Commission within 24 hours in advance of the witness' appearance.

(c) The prepared statement of a witness testifying at a public session of a hearing, in the discretion of the Commission, may be placed into the record, provided that such statement is received by the Commission 24 hours in advance of the witness' appearance.

(d) In the discretion of the Commission, evidence may be included in the record after the close of a public session of a hearing, provided the Commission determines that such evidence does not tend to defame, degrade, or incriminate any person.

(e) The Commission will determine the pertinency of testimony and evidence adduced at its proceedings, and may refuse to include in the record of

a proceeding or may strike from the record any evidence it considers to be cumulative, immaterial, or not pertinent.

[32 FR 4063, Mar. 15, 1967, as amended at 44 FR 75150, Dec. 19, 1979; 44 FR 76798, Dec. 28, 1979]

**§ 702.9 Cross-examination at public session.**

If the Commission determines that oral testimony of a witness at a public session tends to defame, degrade, or incriminate any person, such person, or through counsel, shall be permitted to submit questions to the Commission in writing, which, in the discretion of the Commission, may be put to such witness by the Chairman or by authorized Commission staff personnel.

[44 FR 75150, Dec. 19, 1979]

**§ 702.10 Voluntary witnesses at public session of a hearing.**

A person who has not been subpoenaed and who has not been afforded an opportunity to appear pursuant to § 702.6 may be permitted, in the discretion of the Commission, to make an oral or written statement at a public session of a hearing. Such person may be questioned to the same extent and in the same manner as other witnesses before the Commission.

**§ 702.11 Special executive session.**

If, during the course of a public session, evidence is submitted which was not previously presented at executive session and which the Commission determines may tend to defame, degrade, or incriminate any person, the provisions of § 702.6 shall apply, and such extensions, recesses or continuances of the public session as it deems necessary shall be ordered by the Commission, except that the time and notice requirements of § 702.6 may be modified by the Commission provided reasonable notice of a scheduled executive session is afforded such person, and except that the Commission may, in its discretion, strike such evidence from the record, in which case the provisions of § 702.6 shall not apply.

**§ 702.12 Contempt of the Commission.**

Proceedings and process of the Commission are governed by section 105(g) of the Act, which provides:

In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

**§ 702.13 Intimidation of witnesses.**

Witnesses at Commission proceedings are protected by the provisions of 18 U.S.C. 1505, which provide:

Whoever corruptly, or by threats of force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any Committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigative demand duly and properly made under the Antitrust Civil Process Act willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of such demand; or

Whoever corruptly, or by threats of force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which

such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

**§ 702.14 Transcript of Commission proceedings.**

(a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter, or by any other person or means designated by the Commission.

(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may for good cause be limited to inspection of the official transcript of their testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof.

(c) Persons who have presented testimony at a proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall be granted only to make the transcript conform to their testimony as presented at the proceeding.

[32 FR 4063, Mar. 15, 1967, as amended at 44 FR 75150, Dec. 19, 1979]

**§ 702.15 Witness fees.**

Pursuant to section 102(j) of the Act: A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

[32 FR 4063, Mar. 15, 1967, as amended at 37 FR 23185, Oct. 31, 1972]

**§ 702.16 Attendance of news media at public sessions.**

Reasonable access for coverage of public sessions shall be provided to the various communications media, including newspapers, magazines, radio, newsreels, and television, subject to



the physical limitations of the room in which the session is held and consideration of the physical comfort of Commission members, staff, and witnesses. However, no witnesses shall be televised, filmed, or photographed during the session nor shall the testimony of any witness be broadcast or recorded for broadcasting, if the witness objects.

[44 FR 75150, Dec. 19, 1979]

**§ 702.17 Communications with respect to Commission proceedings.**

During any proceeding held outside Washington, D.C., communications to the Commission with respect to such proceeding must be made to the Chairman or authorized Commission staff personnel in attendance. All requests for subpoenas returnable at a hearing, requests for appearance of witnesses at a hearing, and statements or other documents for inclusion in the record of a proceeding, required to be submitted in advance, must be submitted to the Chairman, or such authorized person as the Chairman may appoint, at an office located in the community where such hearing or proceeding is scheduled to be held. The location of such office will be set forth in all subpoenas issued under the rules in this part and in all notices prepared pursuant to § 706.2.

[44 FR 75150, Dec. 19, 1979]

**§ 702.18 Commission reports.**

(a) If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least thirty (30) days before the report shall be made public in order that such person may make a timely verified answer to the report. The Commission shall afford such person an opportunity to file with the Commission a verified answer to the report or relevant portions thereof not later than twenty (20) days after service of the report or relevant portions thereof upon such person as provided by the regulations in this part.

(1) Such person shall be served with a copy of the report or relevant portions thereof, with an indication of the section(s) that the Commission has de-

termined tend to defame, degrade, or incriminate such person, a copy of the Act and a copy of the regulations in this part.

(2) The report or relevant portions thereof, the Act, and regulations in this part shall be served by depositing the same in the U.S. mail via certified mail, return receipt requested, or by leaving a copy thereof at the last known residence or business address of such person.

(3) The date of service for the purposes of this section shall be the day the material is delivered either by the post office or otherwise, to such person or the agent of such person or at the last known residence or business address of such person. The acknowledgement of the party served, or the verified return of the one making service shall be proof of service except that when service is made by certified mail, the return post office receipt may also constitute proof of same.

(b) If a person receiving a Commission report or relevant portions thereof under this part requests an extension of time from the Commission within 7 days of service of such report, the Commission may, upon a showing of good cause, grant the person additional time within which to file a verified answer.

(c) A verified answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report.

(d) Such verified answer shall be published as an appendix to the report: *Provided, however,* That the Commission may except from the answer such matter as it determines to be scandalous, prejudicial or unnecessary.

[36 FR 5702, Mar. 27, 1971, as amended at 44 FR 75151, Dec. 19, 1979]

**Subpart B—Meetings**

**AUTHORITY:** 5 U.S.C. 552b, Pub. L. 94-409, 90 Stat. 1241.

**SOURCE:** 42 FR 14108, Mar. 15, 1977, unless otherwise noted.



**§ 702.50 Purpose and scope.**

This section contains the regulations of the U.S. Commission on Civil Rights implementing sections (a)-(f) of 5 U.S.C. 552b, the "Government in the Sunshine Act." They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Commission. They open to public observation meetings of the Commissioners of the U.S. Commission on Civil Rights except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

**§ 702.51 Definitions.**

(a) *Commission* means the U.S. Commission on Civil Rights and any Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President under 42 U.S.C. 1975(b).

(c) *Solicitor* means the Solicitor of the U.S. Commission on Civil Rights.

(d) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners are a Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(2) Deliberations among Commissioners regarding the setting of the time, place or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business which is not discussed through conference calls or a series of two party calls by the number of Commissioners re-

quired to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(e) *Public announcement* or *publicly announce* means the use of reasonable methods, such as the posting on Commission public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(f) *Staff Director* means the Staff Director of the U.S. Commission on Civil Rights.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

**§ 702.52 Open meeting requirements.**

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings which provide ample space, sufficient visibility and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

**§ 702.53 Closed meetings.**

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive Order;

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided, that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record received by the Commission from a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would (i) In the case of information received by the Commission from an agency which

regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) be likely to significantly frustrate implementation of a proposed action, except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

#### § 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975d(f), vote to take such action.

(b) A separate vote shall be taken with respect to each meeting, a portion or portions of which is proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(1) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as:

(i) Each meeting in such series involves the same particular matters, and

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph 702.54(b) if one

Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information which is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under § 702.54(c) the Commissioners shall obtain from the Solicitor his or her opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (1)–(10) of § 702.53(a).

(1) For every meeting closed in accordance with paragraphs (1)–(10) of § 702.53(a), the Solicitor shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(2) A copy of certification by the Solicitor, together with a statement from the presiding officer of the closed meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Commission.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or elec-

tronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting which sets forth the time and place of the meeting and the persons present.

(1) In the case of a meeting, a portion of a meeting, closed to the public pursuant to paragraphs (8), (9)(i)(A), or (10) of § 702.53(a), the Commission may retain a set of minutes;

(i) such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under § 702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to § 702.53(a) to § 702.53(a)(5), (6) or (7). The Commission will vote on the request if one Commissioner asks that a vote be taken.

(1) Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

#### § 702.55 Public announcement of meetings.

(a) *Agenda:* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, place and subject matter for the meeting.

(1) Agenda items will be identified in detail adequate to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice:* The Staff Director, as early as possible but in any event at least eight calendar days before a meeting, shall make public announcement of:

- (1) The time of the meeting;
- (2) Its place;



(3) Its subject matter;  
(4) Whether it is open or closed to the public; and

(5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes:* (1) The time of day or place of a meeting may be changed following the public announcement required by § 702.55(b) of this subpart, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or place of the meeting.

(2) The date of a meeting may be changed following the public announcement required by § 702.55(b), or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, place and subject matter of such meeting, and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public, may be changed following the public announcement required by 702.55(b) of this subpart if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d) *Federal Register:* Immediately following all public announcements required by § 702.55(b) and (c) of this

subpart, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the **FEDERAL REGISTER**.

(1) Notice of a meeting will be published in the **FEDERAL REGISTER** even after the meeting which is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

#### § 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the Solicitor required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the **FEDERAL REGISTER** pursuant to this subpart.

(4) Transcripts, electronic recordings and minutes of closed meetings determined not to contain items of discussion or information which may be withheld under § 702.53.

(i) Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b) Requests to review or obtain copies of records compiled under this Act, other than transcripts, electronic recordings or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (Parts 704 and 706, respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under these rules with respect to such requests.

(1) Requests to review or obtain copies of transcripts, electronic recordings or minutes of meetings of a closed meeting maintained under § 702.54(e) and not released under § 702.56(a)(4) shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.



(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

#### § 702.57 Administrative review.

(a) Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file in writing with the Staff Director an objection specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

### PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

#### Sec.

- 703.1 Name and establishment.
- 703.2 Functions.
- 703.3 Scope of subject matter.
- 703.4 Advisory committee management officer.
- 703.5 Membership.
- 703.6 Officers.
- 703.7 Subcommittees.
- 703.8 Meetings.
- 703.9 Reimbursement of members.
- 703.10 Public availability of documents and other materials.

**AUTHORITY:** Sec. 105(c) of the Civil Rights Act of 1957, 71 Stat. 634, as amended.

**SOURCE:** 38 FR 15446, June 12, 1973, unless otherwise noted.

#### §§ 703.1 Name and establishment.

Pursuant to Section 105(c) of the Act, the Commission has chartered and maintains Advisory Committees to the Commission in each State and the District of Columbia. All relevant provisions of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463 as amended) are applicable to the management, membership and operations

of such committees and subcommittees thereof.

[44 FR 75151, Dec. 19, 1979]

#### § 703.2 Functions.

Under the Commission's charter each State advisory committee shall:

(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation of the right to vote and to have the vote counted, by reason of color, race, religion, sex, age, handicap or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(b) Advise the Commission concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution, and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;

(c) Advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress;

(d) Receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State committee;

(e) Initiate and forward advice and recommendations to the Commission upon matters which the State committee has studied;

(f) Assist the Commission in the exercise of its clearinghouse function and with respect to other matters which the State committee has studied;

(g) Attend, as observers, any open hearing or conference which the Commission may hold within the State.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

#### § 703.3 Scope of subject matter.

The scope of the subject matter to be dealt with by State advisory committees shall be those subjects of inquiry or study with which the Commission itself is authorized to deal,

pursuant to section 104(a) of the act. Each State advisory committee shall confine its studies to the State covered by its charter. It may, however, subject to the requirements of § 703.4, undertake to study within the limitations of the act, subjects other than those chosen by the Commission for study.

**§ 703.4 Advisory Committee Management Officer.**

(a) The Assistant Staff Director for the Office of Regional Programs is designated as Advisory Committee Management Officer pursuant to the requirements of the Federal Advisory Committee Act of 1972, (Pub. L. 92-463).

(b) Such officer shall carry out the functions specified in Section 8(b) of the Federal Advisory Committee Act.

(c) Such officer shall with respect to each State Advisory Committee, appoint an employee, subject to the supervision of the Regional Director of the Commission having responsibility for the State within which said Committee has been chartered, to provide services to the Committee and to be responsible for supervising the activity of the Committee pursuant to Section 10 of the Federal Advisory Committee Act.

[44 FR 75151, Dec. 19, 1979]

**§ 703.5 Membership.**

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each State Committee shall consist of at least 11 members appointed by the Commission. Members of the State Committee shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the State Committee may, at any time, be removed by the Commission.

(b) Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age and handicap status.

[44 FR 75151, Dec. 19, 1979]

**§ 703.6 Officers.**

(a) The officers of each State Advisory Committee shall be a Chairperson, Vice Chairperson and such other officers as may be deemed advisable.

(b) The Chairperson shall be appointed by the Commission.

(c) The Vice Chairperson and other officers shall be elected by the majority vote of the full membership of the Committee.

(d) The Chairperson, or in his/her absence the Vice Chairperson, under the direction of the Commission staff member appointed pursuant to 703.4(b), shall:

(1) Call meetings of the Committee;  
(2) Preside over meetings of the Committee;

(3) Appoint all subcommittees of the Committee;

(4) Certify for accuracy the minutes of Committee meetings prepared by the assigned Commission staff member; and

(5) Perform such other functions as the Committee may authorize or the Commission may request.

[44 FR 75151, Dec. 19, 1979]

**§ 703.7 Subcommittees—Special Assignments.**

Subject to the approval of the designated Commission employee, a State Advisory Committee may:

(a) Establish subcommittees, composed of members of the Committee to study and report upon matters under consideration, and it may authorize such subcommittees to take specific action within the competence of the Committee; and

(b) Designate individual members of the Committee to perform special projects involving research or study on matters under consideration by the Committee.

[44 FR 75151, Dec. 19, 1979]

**§ 703.8 Meetings.**

(a) Meetings of a Committee shall be convened by the designated Commission employee, or, subject to his/her approval, by the Chairperson, or by a majority of the Committee members. The agenda for such Committee or subcommittee meeting shall be ap-

proved by the designated Commission employee.

(b) A quorum shall consist of one-half or more of the members of the Committee, or five members, whichever is the lesser, except that with respect to the conduct of factfinding meetings as authorized in paragraph (e) of this section, a quorum shall consist of three members.

(c) Notice of all meetings of a Committee shall be given to the public.

(1) Notice shall be published in the **FEDERAL REGISTER** at least 15 days prior to the meetings, provided that in emergencies, such requirement may be waived.

(2) Notice of meetings shall be provided to the public by press releases and other appropriate means.

(3) Each notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

(d) Except as provided for in paragraph (d)(1) of this section, all meetings of committees or subcommittees shall be open to the public.

(1) The Assistant Staff Director for Regional Programs may authorize a committee or subcommittee to hold a meeting closed to the public if he/she determines that the closing of such meeting is in the public interest provided that: prior to authorizing the holding of a closed meeting the Assistant Staff Director will have requested and received the opinion of the Solicitor of the Commission with respect to whether the meeting may be closed under one or more of the exemptions provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(2) In the event that any meeting or portion thereof is closed to the public, the Committee shall publish, at least annually, in summary form a report of the activities conducted in meetings not open to the public.

(e) Advisory Committees and subcommittees may hold factfinding meetings for the purpose of inviting the attendance of and soliciting information and views from government officials and private persons respecting subject matters within the jurisdiction of the Committee or subcommittee.

(f) Any person may submit a written statement at any business or factfind-

ing meeting of a Committee or subcommittee.

(g) At the discretion of the designated Commission employee or his/her designee, any person may make an oral presentation at any business or factfinding meeting, provided that such presentation will not defame, degrade or incriminate any other person as is prohibited by the Act.

[44 FR 75151, Dec. 19, 1979]

#### § 703.9 Reimbursement of members.

(a) Advisory Committee members may be reimbursed by the Commission by a per diem subsistence allowance and for travel expenses at rates not to exceed those prescribed by Congress for Government employees, for the following activities only:

(1) Attendance at meetings, as provided for in § 703.8; and

(2) Any activity specifically requested and authorized by the Commission to be reimbursed.

(b) Members will be reimbursed for the expense of travel by private automobile on a mileage basis only to the extent such expense is no more than that of suitable public transportation for the same trip, unless special circumstances justify the additional expense of travel by private automobile.

[44 FR 75152, Dec. 19, 1979]

#### § 703.10 Public availability of documents and other materials.

Part 704 of these rules and regulations shall be applicable to reports, publications, and other materials prepared by or for State advisory committees.

### PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Sec.

704.1 Material available pursuant to 5 U.S.C. 552.

704.2 Complaints.

704.3 Other requests and communications.

704.4 Restrictions on disclosure of information.

**AUTHORITY:** Secs. 101-106, 71 Stat. 634-636, as amended (42 U.S.C. 1975-1975e) 5 U.S.C. 552.



**§ 704.1 Material available pursuant to 5 U.S.C. 552.**

**(a) Purpose, scope, and definitions.**

(1) This section contains the regulations of the U.S. Commission on Civil Rights implementing 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records which are customarily furnished in the regular performance of their duties.

(2) For the purposes of these regulations the terms listed below are defined as indicated:

"Commission" means the United States Commission on Civil Rights;

"Solicitor" means the Solicitor of the United States Commission on Civil Rights or his/her designee;

"FOIA" Freedom of Information Act, 5 U.S.C. 552;

"FOIA Request" means a request in writing, for records pursuant to 5 U.S.C. 552 which meets the requirements of 704.1(d) herein. These regulations do not apply to telephone or other oral communications and requests not complying with § 704.1(d)(1)(i);

"Staff Director" means the Staff Director of the United States Commission on Civil Rights.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identifiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552, which are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 1121 Vermont Avenue, NW., Washington, D.C. 20425. Copies of such ma-

terial shall be available upon written request, specifying the material desired, addressed to the Solicitor's Unit, U.S. Commission on Civil Rights, Washington, D.C. 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the *FEDERAL REGISTER* and currently in effect.

(2) *Deletion of identifying details.* Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order to prevent a clearly unwarranted invasion of privacy, justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3).*

(1) *Request Procedures.* (i) Each request for records pursuant to this subsection shall be in writing over the signature of the requester, addressed to the Solicitor's Unit, U.S. Commission on Civil Rights, Washington, D.C. 20425 and: (A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act [if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—e.g., FOIA]; and (B) shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and (C) shall contain a statement that whatever costs involved pursuant to § 704.1(e) will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to § 704.1(e).

(ii) If the information submitted pursuant to § 704.1(d)(1)(i)(B) is insufficient to enable identification and location of the records, the Solicitor shall as soon as possible notify the requester in writing indicating the additional information needed. Every rea-



sonable effort shall be made to assist in the identification and location of the record sought. Time requirements under these regulations are tolled from the date notification under this subsection is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records which is not in writing or does not comply with § 704.1(d)(1)(i) is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided herein, the Solicitor shall immediately notify the requester of noncompliance with § 704.1(d)(1)(i)(C) and § 704.1(e).

(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the Solicitor in writing to the requester within 10 working days after receipt by the Solicitor of such request except as specifically exempted under § 704.1(d)(1)(ii), (iii) and (iv), and shall state: (A) Whether and to what extent the Commission will comply with the request; (B) the probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b) (i)-(ix); (C) the estimated costs, determined in accordance with 704.1(e) herein, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and (D) when records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with § 704.1(d)(3). Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state: (A) Specifically what records are being denied; (B) the reasons for such denials; (C) the specific statutory exemption(s) upon which such denial is based; (D) the names and titles or positions of every person responsible for the denial of such request; and (E) the right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under § 704.1(g).

(iii) Each request received by the Solicitor's Unit for records pursuant to these regulations shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to § 704.1(d)(1) or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by these regulations shall begin when the request is recorded pursuant to § 704.1(d)(2)(iii). A written request pursuant to FOIA but sent to an office of the Commission other than the Solicitor's Unit shall be date stamped, initialed and re-directed immediately to the Solicitor's Unit. The required period for agency determination shall begin when it is received by the Solicitor's Unit in accordance with § 704.1(d)(2)(iii).

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the Solicitor may, in the case of initial determinations under these regulations, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need: (A) To search for and collect the requested records from field facilities or other establishments that are separate from the Solicitor's Unit; (B) to search for, collect, and appropriately examine a voluminous amount of separate and distinct

records which are demanded in a single request; or (C) for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the same agency having substantial subject matter interest therein.

(e) *Fees—(1) Fee schedule:*

(i) Photocopy reproductions from all types of copying processes, each reproduction image—\$.03.

(ii) Standard searching, per hour (minimum charge one-quarter hour)—\$4.09.

(iii) Searching requiring particular training or skills not required of clerical personnel, per hour (minimum one-half hour)—\$8.88.

(iv) The above search fee is not applicable to computerized record search: In situations involving the use of computers to locate and extract the requested information charges will be based only on the direct cost to the agency, including labor, material and computer time.

(v) There will be a charge of \$1.00 each for certification of true copies.

(vi) Payment of fees shall be made by cash (if delivered in person), check or money order payable to "U.S. Treasury".

(2) The Solicitor may in his/her discretion, waive fees in whole or part otherwise assessable under paragraph (e)(1) of this section where:

(i) The total cost of providing the records is less than \$5.00.

(ii) Payment of the full fee by a State or local government agency, or nonprofit group would not be in the general public interest.

(iii) The records have been requested by a Federal agency, a foreign government, or an international governmental organization.

(3) Fees shall be waived or reduced for records requested in writing under § 704.1 when the Solicitor's Unit determines that:

(i) An individual has provided sufficient evidence in a signed statement that he is indigent and that reduction or waiver would not constitute an unreasonable expense to the Commission.

(ii) A person has demonstrated in a written statement that waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public. Requests for waiver or reduction under this subsection must be accompanied by a signed statement indicating ability to pay.

(4) Whenever waiver or reduction of fee is granted only one copy of the record will be furnished.

(5) Appeals from denials of requests for waiver or reduction of fees shall be considered by the Staff Director pursuant to the criteria set forth in § 704.1(e) (2) and (3). Appeal procedure under this subsection shall be in accordance with § 704.1(g) herein.

(6) Whenever a notification is required under § 704.1(d)(1)(iv) or the estimated costs exceed the limit established by the requesting party and the Solicitor has not determined to waive or reduce such fees as provided herein, such notification shall:

(i) Provide the requesting party with such information regarding cost as may be available;

(ii) Extend an offer to the requesting party to confer with the Solicitor in an attempt to reformulate the request in a manner that will minimize the fees and still meet the needs of the requesting party;

(iii) Inform the requesting party that the time requirement imposed by § 704.1(d)(2)(i) will be tolled pending a reformulation of the request, or receipt of an agreement from the requester to bear the estimated costs.

(7) Whenever a requesting party is notified of the possibility of an unproductive search in accordance with § 704.1(d)(2)(i)(B), no search will be conducted until prepayment is made or waived under § 704.1(e) (2) or (3). The time requirement under § 704.1(d)(2)(i) will be tolled from the date of dispatch prepayment as required.

(8) Whenever the estimated cost of providing requested records exceeds \$25.00, the requesting party will be so notified and required to prepay the estimated cost, unless waived, before a search for such records will be conducted. The time requirement under § 704.1(d)(2)(i) will be tolled from the

date of dispatch of notification until the requester makes prepayment as required.

(f) *Exemptions* (5 U.S.C. 552(b))—

(1) *General.* The Commission may exempt from disclosure matters that are:

(i) (A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (A) Interfere with enforcement proceedings; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) constitute an unwarranted invasion of personal privacy; (D) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, would disclose confidential information furnished only by the confidential source; (E) disclose investigative techniques and procedures; or (F) endanger the life or physical safety of law enforcement personnel.

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) *Investigatory records* (5 U.S.C. 552(b)(7)). (i) Among the documents exempt from disclosure pursuant to 704.1(f)(1)(vii) shall be investigative files or similar documents reflecting investigations which either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records would: (A) Deprive a person of a right to a fair trial or an impartial adjudication; (B) constitute an unwarranted invasion of personal privacy; (C) disclose the identity of a confidential source; (D) disclose investigative techniques and procedures; or (E) endanger the life or physical safety of law enforcement personnel.

(ii) Among the documents included in paragraph (f)(2)(1)(C) of this section, shall be documents which disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this subsection to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness will be inhibited by disclosure.

(3) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is either denied records under 704.1(d)(2)(i) or denied waiver or reduction of fees under § 704.1(e)(2) or (3).

(2) Parties may appeal 704.1(d)(2)(i) and (e) (2) or (3) decisions within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, Washington, D.C. 20425, by certified mail, including a copy of the written denial, and may include a statement of the



circumstances, reasons or arguments advanced in support of disclosure or waiver/reduction of fees. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this subsection shall be in writing over the signature of the Staff Director, will be promptly communicated to the person requesting review, and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this subsection shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4).

(5) An extension of time may be granted under this subsection pursuant to criteria established in § 704.1(d)(3)(ii) (A) to (C), except that such extension together with any extension which may have been granted pursuant to § 704.1(d)(3)(ii) may not exceed a total of 10 working days.

[40 FR 22833, May 27, 1975, as amended at 44 FR 75152, Dec. 19, 1979]

§ 704.2 Complaints.

Any person may bring to the attention of the Commission a grievance which he believes falls within the jurisdiction of the Commission, as set forth in section 104 of the Act. This shall be done by submitting a complaint in writing to the Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Washington, D.C. 20425. Allegations falling under section 104(a) (1) and (5) of the Act (discrimination or fraud in voting) must be under oath or affirmation. All complaints should set forth the pertinent facts upon which the complaint is based, including but not limited to specification of (a) names and titles of officials or other persons involved in acts forming the basis for the complaint; (b) accurate designations of place locations involved; (c) dates of events described in the complaint.

[34 FR 7577, May 10, 1969, as amended at 44 FR 75152, Dec. 19, 1979]

§ 704.3 Other requests and communications.

Requests for information should be addressed to Press and Communications Division and requests for Commission literature should be directed to Publications Management Division, U.S. Commission on Civil Rights, Washington, D.C. 20425. Communications with respect to Commission proceedings should be made pursuant to § 702.17 of this chapter. All other communications should be directed to Office of Staff Director, U.S. Commission on Civil Rights, Washington, D.C. 20425.

[44 FR 75152, Dec. 19, 1979]

§ 704.4 Restrictions on disclosure of information.

(a) By the provisions of section 102(g) of the Act, no evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission, and any person who releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than \$1,000 or imprisoned for not more than 1 year.

(b) Unless a matter of public record, all information or documents obtained or prepared by any Member, officer, or employee of the Commission, including members of State Advisory Committees, in the course of his official duties, or by virtue of his official status, shall not be disclosed or used by such person for any purpose except in the performance of his official duties.

(c) Any Member, officer, or employee of the Commission including members of State Advisory Committees, who is served with a subpoena, order, or other demand requiring the disclosure of such information or the production of such documents shall appear in response to such subpoena, order, or other demand and, unless otherwise directed by the Commission, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any such person who is served with such a subpoena, order, or other



demand shall promptly advise the Commission of the service of such subpoena, order, or other demand, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[32 FR 9684, July 4, 1967]

## **PART 705—MATERIALS AVAILABLE PURSUANT TO 5 U.S.C. 552a**

### **Sec.**

- 705.1 Purpose and scope.
- 705.2 Definitions.
- 705.3 Procedures for requests pertaining to individual records in a system of records.
- 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.
- 705.5 Disclosure of requested information to individuals.
- 705.6 Request for correction or amendment to record.
- 705.7 Agency review of request for correction or amendment of the record.
- 705.8 Appeal of an initial adverse agency determination.
- 705.9 Disclosure of records to a person other than the individual to whom the record pertains.
- 705.10 Fees.
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- 705.12 Special procedures: Information furnished by other agencies.
- 705.13 Exemptions.
- 705.95 Accounting of the disclosures of records.

**AUTHORITY:** Secs. 101-106, 71 Stat. 634-636 as amended (42 U.S.C. 1975-1975c) 5 U.S.C. 552a.

**SOURCE:** 40 FR 45727, Oct. 2, 1975, unless otherwise noted. Redesignated at 44 FR 75152, Dec. 19, 1979.

**NOMENCLATURE CHANGE:** 44 FR 75152, Dec. 19, 1979.

### **§ 705.1 Purpose and scope.**

(a) The purpose of this part is to set forth rules to inform the public regarding information maintained by the Commission on Civil Rights about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The rules in this part carry out the requirements of the Privacy Act of

1974 (Pub. L. 93-579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The rules in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act, 5 U.S.C. 552.

### **§ 705.2 Definitions.**

For the purpose of this regulation:

(a) The terms "Commission" and "agency" mean the U.S. Commission on Civil Rights;

(b) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) The term "maintain" includes maintain, collect, use, or disseminate;

(d) The term "record" means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(e) The term "system record" means a group of any records under the control of the Commission from which information may be retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual;

(f) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in section 8 of title 13; and

(g) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(h) For purposes of these Rules, a "confidential source" means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to Sep-

tember 27, 1975, under an implied promise that the identity of the source would be held in confidence.

**§ 705.3 Procedures for requests pertaining to individual records in a system of records.**

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or her or an individual seeking access to information or records pertaining to him or her which is available under the Privacy Act of 1974, shall present his or her request in person or in writing to the Solicitor of the Commission.

(b) In addition to meeting the requirements set forth in § 705.4(c) or (d), any person who requests information under these regulations shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

[40 FR 45727, Oct. 2, 1975, as amended by 42 FR 12046, Mar 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

**§ 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.**

(a) The Solicitor is the designated Privacy Act Officer for the Commission.

(b) An individual making a request to the Solicitor in person may do so at the Commission's headquarters office, 1121 Vermont Avenue, N.W., Washington, D.C. 20425, on any business day during business hours. Persons may

also appear for purposes of identification only, at any of the regional offices of the Commission on any business day during business hours. Regional offices are located as follows:

**Region I:** U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671 (8:45 a.m.-5:30 p.m.)

**Region II:** U.S. Commission on Civil Rights, 26 Federal Plaza, Room 1639, New York, N.Y. 10007, (212) 264-0543 (9:00 a.m.-5:30 p.m.)

**Region III:** U.S. Commission on Civil Rights, 2120 L Street, N.W., Room 510, Washington, D.C. 20037, (202) 254-6670 (8:45 a.m.-5:30 p.m.)

**Region IV:** U.S. Commission on Civil Rights, Citizens Trust Bank Building, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303, (404) 221-4344 (9:00 a.m.-5:30 p.m.)

**Region V:** U.S. Commission on Civil Rights, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7371 (8:45 a.m.-5:30 p.m.)

**Region VI:** U.S. Commission on Civil Rights, Heritage Plaza, 418 South Main, First Floor, San Antonio, Texas 78204, (512) 225-4810 (8:45 a.m.-5:30 p.m.)

**Region VII:** U.S. Commission on Civil Rights, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5253 (8:00 a.m.-5:30 p.m.)

**Region IX:** U.S. Commission on Civil Rights, 312 North Spring Street, Room 1015, Los Angeles, California 90012, (213) 688-5705 (8:45 a.m.-5:00 p.m.)

**Region X:** U.S. Commission on Civil Rights, Federal Building, 915 Second Avenue, Room 2852, Seattle, Washington 98174, (206) 442-1246 (8:00 a.m.-5:00 p.m.)

(c) An individual seeking access to records in person may establish his or her identity by the presentation of one document bearing a photograph (such as a driver's license, passport, or identification card or badge) or by the presentation of two items of identification which do not bear a photograph, but do bear both a name and address (such as a credit card). When identification is made without photographic identification the Commission will request a signature comparison to the signature appearing on the items offered for identification, whenever possible and practical.

(d) An individual seeking access to records by mail shall establish his or her identity by a signature, address,

date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card or other document. The words "Privacy Act Request" should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

(e) An individual seeking access in person or by mail who cannot provide the required documentation of identification may provide a notarized statement, swearing or affirming to his or her identity and to the fact that he or she understands that there are criminal penalties for the making of false statements.

(f) The parent or guardian of a minor or a person judicially determined to be incompetent, in addition to establishing the identity of the minor or incompetent person he or she represents as required by paragraphs (a) through (c) of this section, shall establish his or her own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or court order establishing guardianship.

(g) An individual seeking to review information about himself or herself may be accompanied by another person of his or her own choosing. In all such cases, the individual seeking access shall be required to furnish a written statement authorizing the discussion of his or her record in the presence of the accompanying person.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12046, Mar 2, 1977. Redesignated and amended at 44 FR 75152, Dec. 19, 1979]

#### § 705.5 Disclosure of requested information to individuals.

The Solicitor, or one or more assistants designated by him or her, upon receiving a request for notification of the existence of a record, or for access to a record shall (a) determine whether such record exists; (b) determine whether access is available under the Privacy Act; (c) notify the requesting person of those determinations within 10 (ten) working days (excluding Saturdays, Sundays, and legal public holidays); and (d) provide access to information pertaining to that person which has been determined to be available.

#### § 705.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished to him or her under this part may request the agency to correct or amend all or part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the Solicitor.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment.

(2) The name of the system of records in which the record sought to be amended is maintained.

(3) The location of the record system from which the record was obtained.

(4) A copy of the record sought to be amended or a description of that record.

(5) A statement of the material in the record that should be corrected or amended.

(6) A statement of the specific wording of the correction or amendment sought.

(7) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the amendment sought.

#### § 705.7 Agency review of request for correction or amendment of the record.

Within ten (10) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request for the correction or amendment of a record, the Solicitor shall acknowledge receipt of the request and inform the individual that his or her request has been received and inform the individual whether further information is required before the correction or amendment can be considered. Further, the Solicitor shall promptly, and, under normal circumstances, not later than thirty (30) working days after receipt of the request, make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal, and the procedures estab-



lished by the Commission by which the individual may initiate a review of that refusal. In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12046, Mar. 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

**§ 705.8 Appeal of an initial adverse agency determination.**

(a) Any individual whose request for access or for a correction or amendment which has been denied, in whole or in part, by the Solicitor may appeal that decision to the Staff Director of the Commission, 1121 Vermont Avenue, NW., Room 800, Washington, D.C. 20425, or to a designee of the Staff Director.

(b) The appeal shall be in writing and shall:

- (1) Name the individual making the appeal;
- (2) Identify the record sought to be amended or corrected;
- (3) Name the record system in which that record is contained;
- (4) Contain a short statement describing the amendment or correction sought; and
- (5) State the name of the person who initially denied the correction or amendment.

(c) Not later than thirty (30) working days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the agency received the appeal, the Staff Director shall complete his or her review of the appeal and make a final decision thereon, unless, for good cause shown, the Staff Director extends the appeal period beyond the initial thirty (30) day appeal period. In the event of such an extension the Staff Director shall promptly notify the individual making the appeal that the period for a final decision has been extended.

(d) After review of an appeal request, the Staff Director will send a written notice to the requester containing the following information:

- (1) The decision, and if the denial is upheld, the reasons for the decision;
- (2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision, if the appeal is denied; and
- (3) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's decision denying the request. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if the Commission considers it appropriate, of the agency's reasons for denying the requested correction or amendment. These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12047, Mar. 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

**§ 705.9 Disclosure of records to a person other than the individual to whom the record pertains.**

(a) Any individual who desires to have his or her record disclosed to or mailed to a third person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized. The agent shall also submit proof of his or her own identity as provided in § 705.4.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court to be incompetent, due to physical or mental incapacity, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, copy of a court order or similar documents, and

proof of the individual's identity as provided in § 705.4.

(c) An individual to whom a record is to be disclosed, in person, pursuant to this part may have a person of his or her own choosing accompany the individual when the record is disclosed.

#### § 705.10 Fees.

If an individual requests copies of his or her records the charge shall be three (3) cents per page, provided, however, that the Commission shall not charge for copies furnished to an individual as a necessary part of the process of disclosing the record to an individual. Fees may be waived or reduced in accordance with § 704.1(e) of the Commission's regulations (45 CFR 704) because of indigency, where the cost is nominal, when it is in the public interest not to charge, or when waiver would not constitute an unreasonable expense to the Commission.

#### § 705.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or in any request for an amendment to a record under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

#### § 705.12 Special procedures: Information furnished by other agencies.

When records or information sought from the Commission include information furnished by other Federal agencies, the Solicitor shall consult with the appropriate agency prior to making a decision to disclose or to refuse to disclose the record, but the decision whether or not to disclose the record shall be made by the Solicitor.

#### § 705.13 Exemptions.

(a) Under the provision of 5 U.S.C. 552a(k), it has been determined by the agency that the following exemptions are necessary and proper and may be asserted by the agency:

(1) *Exemption (k)(2) of the Act.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act: Provided, however, That if any individual is denied any right, privilege, or benefit that he or she would otherwise be eli-

gible for, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(2) *Exemption (k)(4) of the Act.* Statistical personnel records that are used only to generate aggregate data or for other evaluative or analytical purposes and which are not used to make decisions on the rights, benefits, or entitlements of individuals.

(3) *Exemption (k)(5) of the Act.* Investigatory material maintained solely for the purposes of determining an individual's qualifications, eligibility, or suitability for employment in the Federal civilian service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) Testing or examination material used solely to determine individual qualifications for promotion or appointment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(b) Following are Commission systems of records which are partially exempt under 5 U.S.C. 552a(k)(2), (4), (5), and (6) and the reasons for such exemptions:

(1) *Appeals, Grievances and Complaints (staff)—Commission Project, CRC-001.* Exempt partially under 5 U.S.C. 552a(k)(2)—The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary informa-

tion, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(2) *Complaints, CRC-003—Exempt partially under 5 U.S.C. 552a(k)(2).* The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(3) *Commission projects, CRC-004—Partially exempt under 5 U.S.C. 552a(k)(a).* The reasons for asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(4) *Other Employee Programs: EEO, Troubled Employee, and Upward Mobility, CRC-006—Partially exempt under 5 U.S.C. 552a(k)(4), (5), and (6).* The reasons for asserting the exemptions are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

(5) *State Advisory Committees Projects, CRC-009—Partially exempt under 5 U.S.C. 552a(k)(2).* The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

## § 705.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by this Part 705, except for the exemptions listed in § 705.95(b), shall be accounted for by keeping a written record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties, or if disclosure would be required under the Freedom of Information Act. 5 U.S.C. 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Record Service for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in § 705.2(e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he/she has complied with § 705.3(a) and with § 705.4(c) or (d).

[42 FR 12047, Mar. 2, 1977]

## PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

### Subpart A—General Provisions

#### Sec.

- 706.1 Adoption of regulations.
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## Sec.

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**AUTHORITY:** Secs. 101-106, 71 Stat. 634-636, as amended (42 U.S.C. 1975-1975e) Pub. L. 95-521, as amended, 5 CFR 735.

**SOURCE:** 44 FR 75152, Dec. 19, 1979, unless otherwise noted.

**Subpart A—General Provisions**

**§ 706.1 Adoption of regulations.**

Pursuant to 5 CFR 735.104(f) and 735.502, the U.S. Commission on Civil Rights (hereinafter referred to as the Commission) hereby adopts, with appropriate modifications, relevant sections of Part 735 of Title 5 of the Code of Federal Regulations as renumbered and set forth below.

**§ 706.2 Purpose.**

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance

of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the United States Commission on Civil Rights' regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests.

**§ 706.3 Definitions.**

In this part:

"Commission" means the United States Commission on Civil Rights, an Executive agency as defined by Section 105 of Title 5, United States Code.

"Employee" means an officer or employee of the Commission including a special Government employee, as defined in 18 U.S.C. 202.

"Executive order" means Executive Order 11222 of May 8, 1965.

"Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

**§ 706.4 Distribution.**

(a) Within 90 days after publication of these regulations in the **FEDERAL REGISTER** the Commission shall furnish each employee with a copy of the regulations.

(b) The Commission shall furnish all new employees with a copy of the regulations at the time of their entrance on duty.

(c) The Commission shall bring the regulations to the attention of each employee annually, and at such other times as circumstances warrant.

(d) The Commission shall have available for review by employees copies of relevant laws, the Executive order, and pertinent Commission instructions relating to ethical and other standards of conduct.

**§ 706.5 Counseling.**

The Solicitor of the Commission shall serve as the agency's ethical conduct counselor and is the designated agency official for the purposes of the Ethics in Government Act of 1978, Pub. L. 95-521. The Solicitor shall respond to requests by employees and special Government employees for advice and guidance respecting questions of ethical conduct, conflicts of interest, reporting of financial interests and other matters of law covered by these regulations.

**§ 706.6 Disciplinary and other remedial action.**

An employee of the Commission who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interests may include but is not limited to:

- (a) Changes in assigned duties;
- (b) Divestment by an employee of any conflicting interest; or
- (c) Disqualification for a particular assignment.

**§ 706.7 Outside employment and other activity.**

Employees of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Employees who wish to engage in outside employment shall first obtain the approval, in writing, of their supervisor.

**§ 706.8 Prohibition against disclosure of evidence.**

All employees of the Commission are subject to the prohibition on disclosure of evidence taken in executive session contained in Section 102(g) of the Civil Rights Act of 1957, 71 Stat. 634, as amended.

**Subpart B—Ethical and Other Conduct and Responsibilities of Employees****§ 706.9 Proscribed actions.**

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Commission efficiency or economy;
- (d) Making a Commission decision outside official channels;
- (e) Losing complete independence or impartiality; or
- (f) Affecting adversely the confidence of the public in the integrity of the Commission.

**§ 706.10 Gifts, entertainment and favors.**

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions from the prohibitions contained in (a) of this section are as follows:

(1) Gifts, entertainment and favors which derive from family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour

where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) Employees shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than themselves. This paragraph, however, does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and 5 U.S.C. 7342.

(e) Neither this section nor § 706.11 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part, for which no Government payment or reimbursement is made. This paragraph, however, does not allow employees to be reimbursed, or payment to be made on their behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits.

**§ 706.11 Proscribed outside employment and other activities.**

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflicts of interest; or

(2) Outside employment which tends to impair mental or physical capacity

to perform Governmental duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for service to the Government as prohibited by 18 U.S.C. 209.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or Commission regulations. An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of non-public information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational public service, or civic organization; or

(3) Outside employment permitted under these regulations.



**§ 706.12 Financial interests.**

(a) Employees shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, or Commission regulations.

**§ 706.13 Use of Government property.**

Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued them.

**§ 706.14 Misuse of information.**

For the purpose of furthering a private interest, employees shall not directly or indirectly use, or allow the use of, official information obtained through or in connection with their Government employment, which has not been made available to the general public.

**§ 706.15 Indebtedness.**

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section

does not require the Commission to determine the validity or amount of the disputed debt.

**§ 706.16 Gambling, betting and lotteries.**

Employees shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

**§ 706.17 General conduct prejudicial to the Government.**

Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

**§ 706.18 Miscellaneous statutory provisions.**

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Commission and of the Government. The attention of Commission employees is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service";

(b) Chapter II of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned;

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913);

(d) The prohibitions against disloyalty and striking (5 U.S.C. 73811; 18 U.S.C. 1918);

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784);

(f) The prohibitions against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 1905);

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c));

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719);

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917);

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001);

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508);

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of the employee by reason of his/her employment (18 U.S.C. 654);

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285);

(p) The prohibitions against political activities in subchapter III of chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608;

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agent Registration Act (18 U.S.C. 219).

### **Subpart C—Financial Reporting Requirements**

#### **§ 706.19 Statements of financial and property interests and outside employment.**

Pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, referred to hereinafter in this Subpart as "the Act"), the following officers and employees of the Commission are required to file annual reports of financial and property interests and outside employment if they have served 61 days or more in their positions during the preceding calendar year:

(a) Officers and employees (including special government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS-16 or above

of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1);

(b) Employees in the excepted service in positions which are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics; and

(c) Each designated agency ethics official.

#### **§ 706.20 Time and place for filing of reports.**

(a) Annual reports are to be filed no later than May 15 of each calendar year, except that persons assuming a position for which reports are required who have not immediately prior to this assumption occupied a covered position in another agency, must file a report within 30 days after assuming the position at the Commission. In the event an individual terminates employment with the Commission and does not accept another position for which reporting is required, the report must be filed no later than the 30th day after termination, covering:

(1) The preceding calendar year if the annual May 15 report has not been filed; and

(2) The portion of the present calendar year up to the date of termination.

(b) Reports shall be filed with the designated ethics officer (Solicitor) of the Commission. The reports of the designated ethics officer and nominees to and holders of positions which require confirmation by the Senate shall be transmitted by the Solicitor to the Office of Government Ethics of the Office of Personnel Management.

#### **§ 706.21 Exclusion of certain positions from reporting requirements.**

(a) Under section 201(f)(5) of the Act, a report is required of any person in the executive branch in a position excepted from the competitive service by reason of being of a confidential or policymaker character. An exemption is available, as provided below, for a person in any such position classified below GS-16 (or the rate of basic pay for which is less than the minimum

rate of basic pay fixed for GS-16) who has no role in advising or making policy determinations with respect to agency programs or policies. Such persons may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature, consistent with the basic criterion set forth in the preceding sentence.

(b) The exclusion of any position will be effective as of the time the Commission files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of its current occupant. Such a list must be filed with the Office of Government Ethics on or before the date on which such reports are due under the Act.

(c) In the event that the Office of Government Ethics finds that one or more positions have been improperly excluded, it will so advise the Commission and set a date for the filing of the report.

**§ 706.22 Information required to be reported—reporting forms.**

Information required to be reported by the Act shall be set forth in the manner specified in, and in accordance with the instructions contained in, Standard Forms issued by the Office of Personnel Management, to be used as follows:

(a) Standard Form 278—for use by an officer or employee filing (1) an annual report pursuant to section 201(d) of the Act, or (2) a departure report upon termination of employment, pursuant to section 201(e) of the Act;

(b) Standard Form 278A—for use by (1) an individual assuming a position for which reporting is required pursuant to section 201(a) of the Act; or (2) an individual whose nomination has been transmitted by the President to the Senate, pursuant to section 201(b) of the Act.

**§ 706.23 Review of reports.**

(a) Financial reports are reviewed by the Commission's designated Ethics official or the Director of the Office of Government Ethics, as appropriate. Reports are to be reviewed within 60 days after the date of their filing or

transmittal to the Office of Government Ethics.

(b) After reviewing a report, the reviewing official is required to:

(1) State upon the report that the reporting individual is in compliance with applicable laws and regulations and to sign the report;

(2) Notify the reporting individual that additional information is required to be submitted and the time by which it must be submitted; or

(3) Notify the reporting individual that the report indicates noncompliance and afford the individual a reasonable opportunity for a written or oral response after which the reviewing official reaches an opinion whether the individual is in compliance.

(c) If the reviewing official determines that the reporting individual is not in compliance with applicable laws and regulations, the reviewing official will notify the individual of that opinion, and after an opportunity for personal consultation, notify the individual of the steps which should be taken to assure compliance and the date by which such steps should be taken.

(d) The use of any steps to bring the individual in compliance are to be in accordance with regulations issued by the Director of the Office of Government Ethics.

(e) To assist employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, the designated Commission ethics official is to maintain a list of those circumstances or situations which have resulted or may result in noncompliance and the lists are to be periodically published and furnished to individuals required to file reports under this Act.

**§ 706.24 Public access to financial disclosure reports.**

(a) Pursuant to section 205(b) of the Act, each report will be made available for public inspection within 15 days after the report is received by the agency, whether or not the review of the report prescribed by section 206 of the Act has been completed.

(b) Pursuant to section 205(b) of the Act, as amended by Pub. L. 96-19, the



following rules are applicable to public access to financial reports:

(1) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(i) That person's name, occupation, and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That such person is aware that it is unlawful to obtain or use a report:

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. Any application for a report shall be available to the public during the period in

which the requested report is available to the public.

(c) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate, as well as nominees to such offices and designated Commission ethics officials, may be directed to the Director of the Office of Government Ethics.

(d) To gain access to or to obtain a copy of a report filed with the Commission, an individual should appear in person at the office of the Solicitor of the Commission, 1121 Vermont Avenue, N.W., Washington, D.C. 20425, during the hours 8:30 A.M. to 4:30 P.M., and complete an application form. Requests by mail should contain the information described in paragraph (b) of this section, together with the signature of the requester. Requests which do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

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**CHAPTER VIII—OFFICE OF PERSONNEL  
MANAGEMENT**

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**PART 801—VOTING RIGHTS PROGRAM**

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**AUTHORITY:** Secs. 7, 9, 79 Stat. 440; 42 U.S.C. 1973e, 1973g.

**SOURCE:** 30 FR 9859, Aug. 7, 1965, unless otherwise noted.

**NOMENCLATURE CHANGE:** 44 FR 55878, Sept. 28, 1979.

**NOTE:** Those amendments to Appendixes A, B, and D in Part 801, which apply to Texas, appearing at 41 FR 16155, Apr. 16, 1976, are also carried in Spanish at the end of Appendix D.

**Subpart A—General Provisions**

§ 801.101 Definitions.

In this part:

(a) "Act" means the Voting Rights Act of 1965, Pub. L. 89-110, as amended by Pub. L. 94-73, August 6, 1975.

(b) "Applicant" means a person who presents himself to an examiner at one of the times and places designated by the OPM under § 801.202 for the purpose of being listed as eligible to vote;

(c) "Applications" means the form prescribed by the OPM under the Act for use by a person applying for listing on an eligibility list;

(d) "OPM" means the U.S. Office of Personnel Management;

(e) "Day" means a calendar day;

(f) "Eligibility list" means a list of eligible voters or supplements to a list of eligible voters, prepared by an examiner under the Act;

(g) "Examiner" means a person designated or appointed by the OPM under the Act to examine applicants for listing on an eligibility list and to prepare and maintain lists of persons eligible to vote in Federal, State, or local elections;

(h) "Hearing officer" means a person authorized by the OPM to adjudicate a challenge to a listing on an eligibility list;

(i) "Political subdivision", "vote", and "voting" have the meanings given these terms in the Act; and

(j) "Parties" means a challenger, a challenged person, and the representative of either.

[30 FR 9059, Aug. 7, 1965, as amended at 41 FR 16155, Apr. 16, 1976]

**§ 801.102 Timely filing required.**

A document or other paper required to be filed within a time limit specified in this part shall be delivered to the office involved before the close of business on the last day of the period, or if filed by mail be postmarked before midnight of the last day of the period.

**§ 801.103 Computation of time.**

In computing a period of time prescribed by this part, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in the State involved, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

**§ 801.104 Words denoting number and gender.**

In this part:

(a) Words importing the singular include and apply to several persons, parties, or things;

(b) Words importing the plural include the singular; and

(c) Words importing the masculine gender include the feminine as well.

**Subpart B—Listing on Eligibility List****§ 801.201 Scope.**

This subpart prescribes the times, places, and procedures for listing on an eligibility list under the Act.

**§ 801.202 Times and places for filing and forms of application.**

(a) The times and places designated by the OPM for filing an application in each political subdivision, and the forms of application prescribed by the OPM, shall be set out in Appendix A to this part and incorporated in and made a part of this section.

(b) The OPM shall give notice to the general public of the times and places designated under paragraph (a) of this section, to appropriate local election officials in the political subdivision, and to the attorney general of the State, by publication thereof in the

FEDERAL REGISTER and by such other means as it considers appropriate.

**APPENDIX A**

This appendix sets out the dates, times, and places designated by the OPM for filing an application in each political subdivision, and sets out the forms of application prescribed by the OPM.

**DATES, TIMES, AND PLACES FOR FILING**

Offices at which applications may be filed will be open in each State in the county or parish and at the place set forth in this appendix beginning on the date specified and continuing thereafter until a closing date is given. Each office will be open Monday through Saturday (except on a legal holiday) between the hours of 8:30 a.m. and 4:30 p.m., except that the OPM may change the hours and days on which any office will be open for filing applications by posting advance notice of the change at the place set forth in this appendix.

**ALABAMA*****County; Place for filing; Beginning date***

Autauga; (1) Prattville—U.S. Post Office; November 8, 1965; (2) Marbury—building adjacent to U.S. Post Office, intersection of Main Street and State Highway 143; February 26, 1966.

Bullock; Union Springs—U.S. Post Office, 108 E. Hardaway Street; November 7, 1978. Choctaw; Butler—Post Office; May 31, 1966.

Conecuh; Evergreen—Holiday Inn, Room 108, Interstate 68 and Highway 83; September 2, 1980.

Dallas; (1) Selma—Federal Building; August 10, 1965; (2) Orrville—U.S. Post Office, State Highway 22; February 26, 1966.

Elmore; (1) Wetumpka—U.S. Post Office; November 8, 1965; (2) Eclectic—trailer at U.S. Post Office; February 26, 1966; (3) Elmore—trailer at U.S. Post Office; February 26, 1966.

Greene; (1) Eutaw—U.S. Post Office; November 8, 1965; (2) Boligee—trailer at U.S. Post Office; March 8, 1966.

Grenada; Grenada—Post Office Building; July 22, 1966.

Hale; (1) Greensboro—Post Office Building; August 10, 1965; (2) Moundville—Tidmore Building; February 26, 1966.

Jefferson; (1) Bessemer—Post Office Building, North 19th Street, January 24, 1966; (2) Birmingham—Post Office and Courthouse Building, 18th at 5th Avenue, North; January 24, 1966; (3) Fairfield—4412 Gary Avenue; January 24, 1966; (4) North

## App. A

## Title 45—Public Welfare

Birmingham—Post Office Building; 2003 41st Avenue (Sayreton), Birmingham; February 14, 1966; (5) Powderly—Library Building, Birmingham Baptist College, 630 Ishkooda Road, Birmingham; February 14, 1966; (6) Wylam—trailer at Post Office, 4221 7th Avenue (Wylam), Birmingham; February 21, 1966; (7) Irondale—7949-A Crestwood Boulevard; February 26, 1966; (8) Homewood—1820 28th Avenue; February 26, 1966; (9) Tarant—1322 Main Street; March 18, 1966.

Lowndes; (1) Fort Deposit—Post Office Building; August 10, 1965; (2) Hayneville—trailer at U.S. Post Office; January 3, 1966. Madison; (1) Canton—285 Peace Street; August 10, 1965; (2) Flora—Segrist Building opposite post office; July 20, 1966.

Marengo; (1) Demopolis—Post Office Building; August 10, 1965; (2) Putnam—trailer adjacent to Post Office; State Highway 69; March 18, 1966.

Montgomery; (1) Montgomery—Post Office and Courthouse Building, corner of Church, Lee, and Moulton Streets, Rooms 332, 334, 336; October 6, 1965, to November 6, 1969; (2) Montgomery—Aronov Building, 474 South Court Street, Room 132; November 7, 1969; (3) Mount Meigs—trailer at U.S. Post Office, intersection of U.S. Highway 80 and Pike Road; February 26, 1966.

Perry; (1) Marion—Post Office Building, Room 3; August 20, 1965; (2) Uniontown—trailer at corner of West and Front Streets; March 5, 1966.

Pickens; Carrollton—U.S. Post Office, Room 200, Courthouse Square, Highway 86; September 5, 1978.

Russell; Phoenix City—U.S. Post Office, 1310 Ninth Avenue; September 26, 1978.

Sumter; Livingston—Post Office; May 3, 1966.

Wilcox; (1) Camden—Federal Building, Room 202-204; August 20, 1965; (2) Alberta—trailer at intersection of State Highway 5 and County Highway 29; March 5, 1966; (3) Pine Apple—trailer at U.S. Post Office, County Highway 59; March 5, 1966.

### GEORGIA

#### *County; Place for filing; Beginning date*

Baker; Newton—U.S. Post Office Building; Nov. 5, 1968.

Bulloch; Statesboro—Federal Building, Conference Room 208, 52 North Main Street; August 5, 1980.

Calhoun; Morgan—Soil Conservation Service, Main Street, P.O. Box 113; August 5, 1980.

Early; Blakely—Qual Motel, Room 26, U.S. 27 South; August 5, 1980.

Hancock; Sparta—Post Office Building, Broad Street; November 8, 1966.

Johnson; Wrightsville—U.S. Post Office, Basement Office 1, 151 South Marcus; August 5, 1980.

Lee; (1) Leesburg—Farmers Exchange Building, Second Floor; April 3, 1967, through April 30, 1969; (2) Leesburg—U.S. Post Office, intersection of State Highway 32 and U.S. Highway 19; May 1, 1969.

Meriweather; Greenville—U.S. Department of Agriculture, Agricultural Stabilization Conservation Service Office, Williams Street; August 10, 1976.

Mitchell; Camilla—FHA District Office Conference Room, Building 10A, Broad Street; August 5, 1980.

Peach; Fort Valley—U.S. Post Office Building; 300 West Church Street; November 7, 1972.

Screven; Sylvania—Post Office Building, Main and East Telephone Streets; April 3, 1967.

Stewart; Lumpkin—U.S. Department of Agriculture, Agricultural Stabilization Conservation Service Office, Meeting Room, Court House, Second Floor; August 10, 1976.

Sumter; Americus—Federal Building and Court House, Basement Conference Room 128, East Forsyth Street; August 5, 1980.

Taliaferro; Crawfordville—Post Office; November 5, 1968.

Telfair; McRae—Postmasters Office, U.S. Post Office, 211 South Second Avenue; August 5, 1980.

Terrell; Dawson—Post Office Building, Stonewall and Lee Streets; April 3, 1967.

Tift; Tifton—FHA, Conference Room 306, Tifton County Administrative Building, 225 Tift Avenue; August 5, 1980.

Twiggs; Jeffersonville—County Office Building; State Highway 96; September 3, 1974.

### LOUISIANA

#### *Parish; Place for filing; Beginning date*

Bossier; (1) Benton—trailer at Post Office; April 3, 1967; (2) Bossier City—Lodge Hall, 1708 Scott Street; April 5, 1967 through March 17, 1969; (3) Bossier City—Post Office, 150 Benton Road, March 18, 1969.

Caddo; (1) Shreveport—Post Office and Courthouse Building, 424 Texas Street; April 3, 1967; (2) Shreveport—Terry Building, 2643 Cooper Road; April 3, 1967; (3) Shreveport; Hollywood Baptist Church; 5305 Roberts Street; April 3, 1967.

De Soto; Mansfield—trailer, at Post Office; April 3, 1967.

East Carroll; (1) Lake Providence—Post Office Building; August 10, 1965; (2) Sondheimer—trailer at Post Office Building; February 14, 1966; (3) Lake Providence—ASCS Office, 205 North Hood; October 19, 1979.

East Feliciana; (1) Clinton—Kline Building, St. Helena Street; August 10, 1965, to February 8, 1966; (2) Clinton—Trailer at U.S. Post Office; February 19, 1966; (3) Jackson—Trailer parked on Post Office



grounds; February 14, 1966; (4) Slaughter—Post Office Building; February 14, 1966.

Madison; Tallulah—Post Office; August 13, 1966.

Ouachita; (1) Monroe—Post Office Building, Room 301; August 20, 1965; (2) West Monroe—I. B. Haynes Building, Cypress and Young Streets, February 14, 1966.

Plaquemines; (1) Buras—Post Office Building, August 10, 1965, through November 17, 1965, reopened August 31, 1967; (2) Belle Chasse—Post Office Building; November 18, 1965; (3) Belle Chasse—US Naval Air Station, Administration Building, Room 46, Office of the Senior Chief of Command; October 19, 1979.

Sabine; Many—U.S. Post Office Building; 525 San Antonio Avenue; September 27, 1974.

St. Helena; Greensburg—(1) Trailer at Post Office; College and Main Streets; August 19, 1972; (2) ASCS Office, Burrell Carter Building, Street Floor, South Main Street; October 19, 1979.

St. Landry; Opelousas—Chattau Motor Inn, 400 East Landry, the Bayou Room; December 5, 1979.

West Feliciana; (1) Saint Francisville—trailer at Post Office; November 3, 1965, through January 7, 1966; (2) Saint Francisville—Post Office Building; January 8, 1966; (3) Weyanoke—trailer located on State Highway 66 approximately 0.3 mile South of Weyanoke; February 14, 1966.

#### MISSISSIPPI

##### *County; Place for filing; Beginning date*

Amite; (1) Liberty—Walsh Building, Main Street, second floor; April 3, 1967; (2) Gloster—Ivey Building, First Street; July 29, 1967.

Benton; Ashland—Post Office Building; October 1, 1965.

Bolivar; Cleveland—Post Office Building; October 1, 1965.

Carroll; (1) Carrollton—Post Office Building, Main Street, January 4, 1966, through March 22, 1968; (2) North Carrollton—Van Meter Lumber Co. Building, George Street, March 23, 1968.

Claiborne; (1) Port Gibson—McFatters Drug Store, Second Floor, 618 Main Street; April 16, 1966, through October 9, 1969; (2) Port Gibson—Federal Building, Room 111; October 10, 1969.

Clay; (1) West Point—Post Office Building; October 1, 1965; (2) Pheba—rear of Champion Grocery Store; July 21, 1967.

Coahoma; Clarksdale—Post Office Building; October 1, 1965.

Covington; Collins—McLauren Building, FHA Conference Room; August 10, 1979.

De Soto; (1) Walls—U.S. Post Office; November 8, 1965, through January 4, 1966; (2) Hernando—U.S. Post Office; January 5,

1966; (3) Olive Branch—second floor above Post Office; July 22, 1967.

Forrest; (1) Hattiesburg—U.S. Courthouse, corner of Pine and Forrest Streets, Room 6; June 8, 1967; (2) Petal—108 Ninth Avenue; September 16, 1967.

Franklin; Meadville—Old Halford Building, Highway 84 East, one block from city square; April 3, 1967.

Greene; Leakesville—FHA Conference Room, New Bank Annex, Main and Lafayette Street; August 10, 1979.

Grenada; (1) Grenada—Post Office Building; July 22, 1966, through August 7, 1966; (2) Grenada—639 Union Street; August 8, 1966, through October 9, 1969; (3) Grenada—U.S. Post Office, basement, October 10, 1969; (4) Tie Plant—trailer at site of Horseshoe Store two blocks west of Tie Plant School on dirt road; September 9, 1966.

Hinds; (1) Jackson—301 Building, 301 North Lamar Street; November 8, 1965, through January 2, 1966; (2) Jackson—Post Office Building, 245 East Capitol Street; January 3, 1966; (3) Jackson—848 Lynch Street; June 22, 1966; (4) Raymond—U.S. Post Office; November 8, 1965.

Holmes; (1) Lexington—U.S. Post Office; November 8, 1965; (2) Cruger—U.S. Post Office; July 29, 1967.

Humphreys; (1) Belzoni—Post Office Building; October 1, 1965; (2) Louise—Post Office Building; June 21, 1966; (3) Isola—trailer at Post Office, August 23, 1971.

Issaquena; Mayersville—trailer at Post Office; June 15, 1967.

Jasper; Bay Springs—trailer at New Post Office; April 16, 1966.

Jefferson Davis; (1) Prentiss—Magnolia Courts, intersection of U.S. Highway 84 and State Highway 42, Units 21 through 24; August 25, 1965, through August 26, 1965; (2) Prentiss—Post Office Building; August 27, 1965.

Jefferson; Fayette—Ball Drug Store Building, Main Street; November 8, 1965.

Jones; (1) Laurel—Federal Building, Room B-8; August 20, 1965; (2) Ellisville—102 Jasmine Street; September 16, 1967.

Kemper; DeKalb—U.S. Post Office; Lobby; Seventh Street and Eighth Avenue; November 4, 1974.

Leflore; (1) Greenwood—Post Office Building; August 10, 1965; (2) Minter City—trailer on lot on northwest side of Post Office; June 6, 1967.

Madison; Canton—285 Peace Street; August 10, 1965.

Marshall; Holly Springs—Post Office Building; August 8, 1967.

Neshoba; Philadelphia—U.S. Post Office; November 8, 1965.

Newton; (1) Newton—Post Office Building; January 4, 1966; (2) Decatur—building



## App. A

on Fourth Avenue across street from U.S. Post Office; July 29, 1967.

Noxubee; (1) Macon—Post Office Building, Basement, Room 1; April 16, 1966; (2) Brooksville—Jourdan Building, Front Street; July 29, 1967.

Oktibbeha; Starkville—Post Office Building, 302 University Drive; April 3, 1967.

Pearl River; Picayune—Community Recreation Center; Library; Rosa and Beech Streets; June 8, 1974.

Quitman; Marks—Corp of Engineers, Rogers Road; October 29, 1980.

Rankin; (1) Brandon—Rankin Building, intersection of U.S. Highway 80 and State Highway 18; April 16, 1966, through August 4, 1966; (2) Brandon—Nettles Drug Store Building, East Government Street; August 5, 1966 through January 31, 1971; (3) Brandon—280 Government Street; February 1, 1971.

Sharkey; Rolling Fork—102 Elm Street; June 14, 1967.

Simpson; (1) Mendenhall—Post Office Building; January 4, 1966; (2) Magee—Post Office Building, Ninth Avenue (between Eighth and Ninth Streets); January 10, 1966.

Sunflower; Indianola—Post Office Building; May 2, 1967.

Tallahatchie; (1) Charleston—103 Market Street; August 23, 1971; (2) Sumner—Abbey Building, East Court Square; August 23, 1971.

Tunica; Tunica—Department of Agriculture Building, Agricultural Conservation and Stabilization Service; South Side, Court Square; November 3, 1975.

Warren; Vicksburg—Post Office and Courthouse Building, Crawford and Monroe Streets; January 4, 1966.

Wilkinson; (1) Woodville—Post Office Building; August 8, 1967, to August 24, 1967; (2) Woodville—Odd Fellows Building; August 24, 1967.

Winston; Louisville—Post Office Building; Basement, Room 6; April 16, 1966.

Yazoo; Yazoo City, 100 South Main Street; November 2, 1971.

## TEXAS

### *County; Place for filing; Beginning date*

Atascosa; Pleasanton—Office of USDA, 803 North Bryant; October 29, 1980

Bee; Beeville—Agriculture Plant and Animal Inspection Service; Basement, U.S. Post Office, 111 N. St. Mary's Street; November 2, 1976.

Crockett; Ozona—Agricultural Stabilization and Conservation Office, 801 Avenue E; August 12, 1978.

El Paso; El Paso—2211 East Missouri Avenue, Suite N300; November 7, 1978.

Fort Bend; Richmond—Agricultural Stabilization Conservation Office; May 1, 1976.

## Title 45—Public Welfare

Frio; Pearsall—Federal Building, 411 East Colorado Avenue; November 2, 1976.

La Salle; Cotulla—U.S. Border Patrol Station, Federal Building, North Main Street; November 2, 1976.

Medina; Hondo—Agricultural Stabilization Conservation Office; 1703 Avenue K; May 1, 1976.

Reeves; Pecos—U.S. Post Office, U.S. Attorneys Office, Room 301; May 6, 1978.

Uvalde; Uvalde—Agricultural Stabilization Conservation Office; 119 West South Street; May 1, 1976.

Wilson; Floresville—Agricultural Stabilization Conservation Office; May 1, 1976.

## SOUTH CAROLINA

### *County; Place for filing; Beginning date*

Clarendon; Manning—Federal Building; November 8, 1965.

Darlington; Darlington—U.S. Post Office, 201 Pearl Street; November 7, 1978.

Dorchester; St. George—U.S. Post Office; November 8, 1965.

Marion; Marion—U.S. Post Office, 201 South Main Street, Conference Room; June 27, 1978.

## FORMS OF APPLICATION

### ALABAMA

#### *Front*

Form approved  
Budget Bureau No. 50-R359

### APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1966

State of Alabama County of \_\_\_\_\_  
Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle) \_\_\_\_\_ (Last)

2. Age \_\_\_\_\_

3. Address \_\_\_\_\_ (RFD or Street  
Number) \_\_\_\_\_ (Street) \_\_\_\_\_ (City  
or Town) \_\_\_\_\_ (State)

4. How long have you lived in Alabama?

5. How long have you lived at the above address? \_\_\_\_\_

6. What is your precinct? \_\_\_\_\_ or ward? \_\_\_\_\_

7. Are you now (1) on active duty in the Armed Forces of the United States or the Alabama National Guard, (2) an employee of the United States or the State of Alabama, or (3) a seaman or college student?  
\_\_\_\_\_ ☐ Yes ☐ No

8. (a) Are you now registered to vote in Alabama? \_\_\_\_\_ ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? \_\_\_\_\_ ☐ Yes ☐ No

9. Are you a citizen of the United States and of the State of Alabama? — ☐ Yes ☐ No

Former Address \_\_\_\_\_

10. Have you ever been convicted of a crime other than a traffic violation? — ☐ Yes ☐ No

11. Have you ever been declared legally insane by a court? — ☐ Yes ☐ No

*Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.*

**STOP HERE. TAKE THE FORM TO THE EXAMINER**

I do solemnly swear (or affirm) that the information I have provided is true and correct to the best of my knowledge, information, and belief. I do further personally swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; and that I do not believe in nor am I affiliated with any group or party which advocated or advocates the overthrow of the Government of the United States or of the State of Alabama by unlawful means. Signature (or mark) of Applicant \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me on this date \_\_\_\_\_

Examiner \_\_\_\_\_

*U.S. Office of Personnel Management  
CSC Form 805-A  
† August 1965*

**Back**

Do not write on this side—for use by examiner

**ADDITIONAL INFORMATION ITEMS**

2. If applicant shows his age to be under 21, write in his date of birth \_\_\_\_\_

4. If applicant shows that he has not lived in Alabama for one year, will he have lived in Alabama for one year by the date of the next election? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

5. If applicant shows that he has not lived at his present address for six months, will he by the date of the next election have:

Lived in the same county for six months? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

Lived in his precinct or ward for three months? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

Lived in the same city or town for three months? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

7. If applicant answers yes, is his residence in Alabama and in his county for temporary purposes only? — ☐ Yes ☐ No

If yes, write in his occupation \_\_\_\_\_

8. (a) If applicant shows that he is now registered to vote in Alabama, write in the county where he is registered \_\_\_\_\_

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed \_\_\_\_\_ and certificate number if available \_\_\_\_\_

10. If applicant answers yes, name the crime \_\_\_\_\_ Where and when convicted? \_\_\_\_\_ Was the conviction for a disqualifying crime? — ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with restoration of his right to vote? — ☐ Yes ☐ No

If so pardoned, how and when? \_\_\_\_\_

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? — ☐ Yes ☐ No

If yes, when and by what court? \_\_\_\_\_

Certificate of Eligibility Issued-No. \_\_\_\_\_  
Notification of Ineligibility Issue-No. \_\_\_\_\_

GEORGIA

Front

**APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965**

Form approved

Budget Bureau No. 50-R359

State of Georgia County of \_\_\_\_\_  
Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle) \_\_\_\_\_ (Last) \_\_\_\_\_

2. Age \_\_\_\_\_

3. Address \_\_\_\_\_ (RFD or Street Number) \_\_\_\_\_ (Street) \_\_\_\_\_ (City or Town) \_\_\_\_\_ (State) \_\_\_\_\_

4. How long have you lived in Georgia? — \_\_\_\_\_

5. How long have you lived at the above address? — \_\_\_\_\_

6. What is your election district? — \_\_\_\_\_

7. Are you now on active duty in the Armed Forces of the United States? — ☐ Yes ☐ No

8. (a) Are you now registered to vote in Georgia? — ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? — ☐ Yes ☐ No

## App. A

9. Are you a citizen of the United States and of the State of Georgia? — ☐ Yes ☐ No

10. Have you ever been convicted of a crime other than a traffic violation? — ☐ Yes ☐ No

11. Have you ever been declared legally insane or idiotic by a court? — ☐ Yes ☐ No

*Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.*

### STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that I am not registered to vote under any other name; that I have correctly answered the questions appearing elsewhere on this application; that the information contained elsewhere on this application is true.

Signature (or mark) of applicant \_\_\_\_\_  
Sworn to (or affirmed) and subscribed before me this date \_\_\_\_\_

Examiner \_\_\_\_\_

U.S. Office of Personnel Management  
CSC Form 805-G  
† August 1965

### Back

Do not write on this side—for use by the Examiner

### ADDITIONAL INFORMATION ITEMS

2. If applicant shows his age to be under 18, will he be 18 by the date of the next election? — ☐ Yes ☐ No

Write in his date of birth \_\_\_\_\_

4. If applicant shows that he has not lived in Georgia for one year, will he have lived in Georgia for one year by the date of the next election? — ☐ Yes ☐ No

If yes, write in date residence began \_\_\_\_\_

Former address \_\_\_\_\_

5. If applicant shows that he has not lived at his present address for six months, will he have lived within the same county for six months by the date of the next election? — ☐ Yes ☐ No

If yes, write in the date residence began \_\_\_\_\_

Former address \_\_\_\_\_

7. If applicant answers yes, is his residence in Georgia and in his county for temporary purposes only? — ☐ Yes ☐ No

8. (a) If applicant shows that he is now registered to vote in Georgia, write in the county where he is registered \_\_\_\_\_

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed \_\_\_\_\_ and certificate number if available \_\_\_\_\_

10. If applicant answers yes, name the crime \_\_\_\_\_ Where and when

## Title 45—Public Welfare

convicted? \_\_\_\_\_ Was the conviction for a disqualifying crime? — ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned? — ☐ Yes ☐ No

If so pardoned, where and when? \_\_\_\_\_

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? — ☐ Yes ☐ No

If yes, when and by what court? \_\_\_\_\_

Certificate of Eligibility Issued—No.

Notice of Ineligibility Issued—No.

### LOUISIANA

### Front

Form approved  
Budget Bureau No. 50-R359

### APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

State of Louisiana Parish of \_\_\_\_\_  
Instructions to the applicant: Please fill out this side of this form. If you need help in answering questions 1 through 13, the Examiner will help you.

1. Name \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle) \_\_\_\_\_ (Last) \_\_\_\_\_

2. Age \_\_\_\_\_

3. Address \_\_\_\_\_ (RFD or Street Number) \_\_\_\_\_ (Street) \_\_\_\_\_ (City or Town) \_\_\_\_\_ (State) \_\_\_\_\_

4. How long have you lived in Louisiana? — \_\_\_\_\_

5. How long have you lived at the above address? — \_\_\_\_\_

6. What is your precinct and ward? — \_\_\_\_\_

7. Are you now (1) on active duty in the Armed Forces of the United States or the Louisiana National Guard, (2) an employee of the United States or the State of Louisiana, or (3) a seaman or college student? — ☐ Yes ☐ No

8. (a) Are you now registered to vote in Louisiana? — ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? — ☐ Yes ☐ No

9. Are you a citizen of the United States and of the State of Louisiana? — ☐ Yes ☐ No

10. Have you ever been convicted of a crime other than a traffic or game violation? — ☐ Yes ☐ No

11. Have you ever been dishonorably discharged from or are you a deserter from the Louisiana National Guard or militia or the military service of the United States? — ☐ Yes ☐ No

12. Have you ever been declared legally insane or incompetent by a court? — ☐ Yes ☐ No

13. Are you now living in a charitable home or institution? — ☐ Yes ☐ No

14. What is your political party preference? — \_\_\_\_\_

## Chapter VIII—Office of Personnel Management

## App. A

*Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.*

### STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that I will faithfully and fully abide by all of the laws of the State of Louisiana, that I am well disposed to the good order and happiness of the State of Louisiana and of the United States, and that the information I have provided is true to the best of my knowledge and belief.

Signature (or mark) of applicant \_\_\_\_\_  
Sworn to (or affirmed) and subscribed before me this date \_\_\_\_\_

Examiner \_\_\_\_\_  
U.S. Office of Personnel Management  
CSC Form 805-L  
† August 1965

### Back

Do not write on this side—For use by examiner

### ADDITIONAL INFORMATION ITEMS

2. If the applicant shows his age to be under 21, will he be 21 by the date of the next election? — ☐ Yes ☐ No

Write in his date of birth \_\_\_\_\_

4. If the applicant shows that he has not lived in Louisiana for one year, will he have lived in Louisiana for one year by the date of the next election? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

5. If applicant shows that he has not lived at his present address for six months, will he by the date of the next election have:

Lived in the same parish for six months? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

Lived in this precinct for three months? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

Lived in the same town or city for four months? — ☐ Yes ☐ No

If yes, write in the date residence began — \_\_\_\_\_

Former Address \_\_\_\_\_

7. If applicant's answer is yes, is his residence in Louisiana and in his parish for temporary purposes only? — ☐ Yes ☐ No

If yes, write in his occupation \_\_\_\_\_

8. (a) If applicant shows that he is now registered to vote in Louisiana, write in the parish where he is registered: \_\_\_\_\_

(b) If applicant shows that he is now listed under the Voting Rights Act, write in

the parish where he is listed \_\_\_\_\_ and certificate number if available \_\_\_\_\_

10. If applicant answers yes, name the crime \_\_\_\_\_

Where and when convicted? \_\_\_\_\_

Was the conviction for a disqualifying crime? — ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with express restoration of the right to vote? — ☐ Yes ☐ No

If so pardoned, how and when? \_\_\_\_\_

11. If applicant answers yes, write in whether dishonorably discharged or a deserter? \_\_\_\_\_

If dishonorably discharged, has he been reinstated? — ☐ Yes ☐ No

If yes, when and where? \_\_\_\_\_

If a deserter, has he returned to his command and made up his lost time? \_\_\_\_\_

☐ Yes ☐ No

If yes, when and where? \_\_\_\_\_

12. If applicant shows that he has been declared legally insane or incompetent by a court, has he subsequently been declared legally sane or competent by a court? — ☐ Yes ☐ No

If yes, when and what court? \_\_\_\_\_

13. If the applicant shows that he is now living in a charitable home or institution, is he disqualified? — ☐ Yes ☐ No

Certificate of Eligibility Issued—No. \_\_\_\_\_

Notice of Ineligibility Issued—No. \_\_\_\_\_

### MISSISSIPPI

### Front

Form approved  
Budget Bureau No. 50-RO436

### APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

State of Mississippi, County of \_\_\_\_\_  
Instructions to the Applicant: Please fill out both sides of this form. If you need help in answering any question, the Examiner will help you.

1. Name \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle) \_\_\_\_\_ (Last)

2. Date of Birth \_\_\_\_\_

3. Social Security No \_\_\_\_\_

4. Are you a citizen of the United States? — ☐ Yes ☐ No

5. What is your present residence address and each place you have resided during the past year, stating when you lived at each place?

(a) Present address \_\_\_\_\_  
From \_\_\_\_\_ to date.

(b) Previous address \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

(c) Previous address \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_

(If you need additional space, use the back side of this form.)



# App. A

# Title 45—Public Welfare

6. What is your election district?  
 \_\_\_\_\_ Beat \_\_\_\_\_ Precinct  
 \_\_\_\_\_ City Ward \_\_\_\_\_

7. Are you now registered to vote in Mississippi? \_\_\_\_\_ ☐ Yes ☐ No

(a) When: \_\_\_\_\_

(b) What county: \_\_\_\_\_

(c) Address at that time: \_\_\_\_\_

8. Have you ever been convicted of a crime of murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy? \_\_\_\_\_ ☐ Yes ☐ No

(a) Which crime? \_\_\_\_\_

(b) When and where? \_\_\_\_\_

Has the right to vote been restored? \_\_\_\_\_  
☐ Yes ☐ No

If yes, when: \_\_\_\_\_

9. Have you ever been declared legally insane by a court? \_\_\_\_\_ ☐ Yes ☐ No

If yes, when: \_\_\_\_\_

Where: \_\_\_\_\_

(a) When and where declared competent by a court: \_\_\_\_\_

10. (a) If you have a current driver's license, state its number and the address shown thereon: \_\_\_\_\_

(b) If you own a motor vehicle, state license tag number and the county and State in which the vehicle is registered for ad valorem and road and bridge privilege tax purposes: \_\_\_\_\_

(c) If you filed an income tax return for the year immediately past, state the address on your most recent income tax return: \_\_\_\_\_

(d) If you own real property, state its location: \_\_\_\_\_

(e) If you are receiving homestead exemption on any real property, state the location of all such property: \_\_\_\_\_

(f) If you are currently employed, state the location of the place where you actually report for work: \_\_\_\_\_

(g) State the location of any church affiliation or location of any other religious groups of which you are a member: \_\_\_\_\_

(h) State the location of the greater amount of your personal possessions: \_\_\_\_\_

(i) If you have a telephone, state its location and number: \_\_\_\_\_

11. Do you intend to make this precinct and county your fixed habitation, for a definite or indefinite length of time, to which you intend to return whenever absent? \_\_\_\_\_ ☐ Yes ☐ No

*Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.*

**STOP HERE. TAKE THE FORM TO THE EXAMINER**

I do solemnly swear (or affirm) that I am at least eighteen (18) years old (or will be before the next election in this county), and

that I am now in good faith a resident of this state and of \_\_\_\_\_ election precinct in this county and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of this state as a disqualification to be an elector; that I have truly answered all questions propounded to me in the foregoing application for registration; and that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.

Signature (or mark) of applicant \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this date \_\_\_\_\_

Examiner \_\_\_\_\_

*U.S. Office of Personnel Management*

Certificate of Eligibility Issued—No. \_\_\_\_\_

Notice of Ineligibility Issued—No. \_\_\_\_\_

**CSC Form 805-M**

Revised February 1973

*Back*

Do not write on this side—for use by examiner

## ADDITIONAL INFORMATION ITEMS

2. If applicant shows his age to be under 21, will he be 21 by the date of the next election? \_\_\_\_\_ ☐ Yes ☐ No

Write in his date of birth \_\_\_\_\_

5. If applicant shows that he has not lived in Mississippi for two years, will he have lived in Mississippi for two years by the date of the next election? \_\_\_\_\_ ☐ Yes ☐ No

If yes, write in the date residence began —

Former address \_\_\_\_\_

6. If applicant shows that he has not lived at his present address one year, will he by the date of the next election have:

Lived in the same election district for one year? \_\_\_\_\_ ☐ Yes ☐ No

If applicant is a minister or minister's wife, for 6 months? \_\_\_\_\_ ☐ Yes ☐ No

If yes, write in the date residence began —

Former address \_\_\_\_\_

Lived in the same city, town, or village for one year? \_\_\_\_\_ ☐ Yes ☐ No

If applicant is a minister or minister's wife, for 6 months? \_\_\_\_\_ ☐ Yes ☐ No

If yes, write in the date residence began —

Former address \_\_\_\_\_

8. (a) If applicant shows that he is now registered to vote in Mississippi, write in the county where he is registered \_\_\_\_\_

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed \_\_\_\_\_ and certificate number if available \_\_\_\_\_

10. If applicant answers yes, was the conviction for bribery, burglary, theft, arson,

perjury, forgery, embezzlement, bigamy, or obtaining money or goods under false pretenses? — ☐ Yes ☐ No

If yes, answer the following questions:

Which crime? \_\_\_\_\_

When and where convicted? \_\_\_\_\_

Has right to vote been restored by the legislature? \_\_\_\_\_

If so restored, when? \_\_\_\_\_

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? — ☐ Yes ☐ No

If yes, when and by what court? \_\_\_\_\_

Certificate of Eligibility Issued—No. \_\_\_\_\_

Notice of Ineligibility Issued—No. \_\_\_\_\_

SOUTH CAROLINA

Front

Form approved  
Budget Bureau No. 50-R359

APPLICATION TO BE LISTED UNDER THE  
VOTING RIGHTS ACT OF 1965

State of South Carolina County of \_\_\_\_\_

Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name \_\_\_\_\_ (First) \_\_\_\_\_  
\_\_\_\_\_ (Middle) \_\_\_\_\_ (Last)

2. Age \_\_\_\_\_

3. Address \_\_\_\_\_ (RFD or street number) \_\_\_\_\_ (Street) \_\_\_\_\_ (City or town) \_\_\_\_\_ (State)

4. (a) Are you a minister in charge of an organized church or the spouse of such a minister? — ☐ Yes ☐ No

(b) Are you a teacher in a public school or the spouse of such a teacher? — ☐ Yes ☐ No

5. How long have you lived in South Carolina \_\_\_\_\_

6. How long have you lived at the above address \_\_\_\_\_

7. What is your ward and precinct \_\_\_\_\_

8. Are you now (1) a student, (2) a seaman, (3) an employee of the United States, or (4) on active duty in the Armed Forces of the United States? — ☐ Yes ☐ No

9. (a) Are you now registered to vote in South Carolina? — ☐ Yes ☐ No

(b) Are you now listed under the Voting Rights Act? — ☐ Yes ☐ No

10. Are you a citizen of the United States and the State of South Carolina? — ☐ Yes ☐ No

11. Have you ever been convicted of a crime other than a traffic violation? — ☐ Yes ☐ No

12. Have you ever been declared legally insane, idiotic, or mentally incompetent by a court? — ☐ Yes ☐ No

13. Are you a pauper receiving all your support from your county, town, or city government? — ☐ Yes ☐ No

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment

STOP HERE—TAKE THE FORM TO THE  
EXAMINER

I hereby solemnly swear (or affirm) that the information I have provided is true to the best of my knowledge and belief and I so certify.

Signature (or mark) of applicant \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this date \_\_\_\_\_

Examiner \_\_\_\_\_

U.S. Office of Personnel Management

CSC Form 805-S, October 1965

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Do not write on this side—for use by examiner

ADDITIONAL INFORMATION ITEMS

5. If the applicant shows that he has not lived in South Carolina for one year, will he have lived in South Carolina for one year by the next election (or six months if applicant is a minister in charge of an organized church or a teacher in a public school, or the spouse of either)? — ☐ Yes ☐ No

If yes, write in the date when he began to live in South Carolina \_\_\_\_\_

Former address \_\_\_\_\_

6. If the applicant (other than a minister, teacher, or spouse of either) shows that he has not lived at the same address for six months, will he by the date of the next election have:

Lived in the same county for six months? — ☐ Yes ☐ No

If yes, write in the date when he began to live in the county \_\_\_\_\_

Former address \_\_\_\_\_

Lived in the same city or town for four months? — ☐ Yes ☐ No

If yes, write in the date when he began to live in the city or town \_\_\_\_\_

Former address \_\_\_\_\_

Lived in the same precinct for three months? — ☐ Yes ☐ No

If yes, write in the date when he began to live in the precinct \_\_\_\_\_

Former address \_\_\_\_\_

8. If applicant answers yes, is his residence in South Carolina and in his county for temporary purposes? ☐ Yes ☐ No

If yes, write in his occupation \_\_\_\_\_

9. (a) If applicant shows that he is now registered to vote in South Carolina, write in the county where he is registered \_\_\_\_\_

(b) If applicant shows that he is now listed under the Voting Rights Act, write in

## App. A

the county where he is listed \_\_\_\_\_  
and certificate number if available \_\_\_\_\_

11. If applicant answers yes, name the crime \_\_\_\_\_

Where and when convicted \_\_\_\_\_

Was the conviction for a disqualifying crime — ☐ Yes ☐ No

If a disqualifying crime, has the disqualification been removed by pardon of the Governor — ☐ Yes ☐ No

If so pardoned, where, when and by whom \_\_\_\_\_

12. If the applicant shows that he has been declared legally insane, idiotic, or mentally incompetent by a court, has he subsequently been declared legally sane or mentally competent by a court — ☐ Yes ☐ No

If yes, when and by what court \_\_\_\_\_

13. If the applicant shows that he is a pauper receiving all of his support from his county, town, or city, write details here \_\_\_\_\_

Certificate of eligibility issued—No. \_\_\_\_\_

Notice of ineligibility issued—No. \_\_\_\_\_

TEXAS

Front

Form approved  
OMB No. 50R0592

### Voting Rights Act Application

The information requested below is for the purpose of determining whether you are eligible to vote. If you are found eligible to vote, your name will be certified to appropriate state officials for addition to the official voting lists. The solicitation of this information for this purpose is authorized by the Voting Rights Act of 1965, as amended. While you are not required to respond, your cooperation is needed if you wish to be found eligible to vote.

Instructions to the Applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle) \_\_\_\_\_ (Last) Maiden surname if married woman: \_\_\_\_\_

2. Sex: \_\_\_\_\_

3. Permanent residence address: \_\_\_\_\_  
(Street and Apt. No., if any, or Route No. or location (Not P.O. Box)) \_\_\_\_\_ (City) \_\_\_\_\_ (ZIP code)

4. Election Precinct (if known): \_\_\_\_\_

5. Mailing address if different from above: \_\_\_\_\_  
(Street or P.O. box) \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_  
(ZIP code)

6. Birthplace: City \_\_\_\_\_ or county \_\_\_\_\_  
State \_\_\_\_\_ or foreign country \_\_\_\_\_

## Title 45—Public Welfare

7. Birth date: Month \_\_\_\_\_ Day \_\_\_\_\_  
Year \_\_\_\_\_ If naturalized, give court of naturalization or its location: \_\_\_\_\_

8. Former registration: If now registered in another Texas County: \_\_\_\_\_  
(Name of county)

Last residence address: \_\_\_\_\_  
(Street and apt. No., if any) \_\_\_\_\_ (City) \_\_\_\_\_  
(State) \_\_\_\_\_ (ZIP code)

The disclosure of social security number and telephone number is voluntary. Failure to state either or both numbers will NOT result in your application being deficient. The numbers will be used only to maintain the accuracy and integrity of the registration records.

Social Security Number \_\_\_\_\_ Telephone Number \_\_\_\_\_

Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.

STOP HERE.

TAKE THE FORM TO THE EXAMINER.

I do solemnly swear (or affirm) that I, the applicant, am 18 years of age or over, or will be 18 years of age or older within 60 days after applying for registration, and am a citizen of the United States, hold legal residence in this county, have met all legal requirements, and I understand that the giving of false information to procure the registration of a voter is a felony.

Signature (or mark) of applicant \_\_\_\_\_

Signature of agent\* \_\_\_\_\_

\*Agent must be a registered voter, and must be only: (Circle one applicable) Husband—Wife—Mother—Father—Son—Daughter

Sworn to (or affirmed) and subscribed to me this date \_\_\_\_\_

Examiner \_\_\_\_\_

U.S. Office of Personnel Management  
CSC FORM 805-T  
April 1976

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Do not write on this side—For use by examiner

### Additional Information Items

Texas law states that a person convicted of a felony and not subsequently pardoned, and a person adjudicated a lunatic or idiot and not subsequently adjudicated competent, are not qualified to vote. Therefore, the following questions must be asked.

A. Have you ever been convicted of a felony: — ☐ Yes ☐ No

If applicant answers yes, name the crime—  
Where and when convicted \_\_\_\_\_

Was the conviction for a disqualifying crime: — ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with restoration of his right to vote: — ☐ Yes ☐ No

If so pardoned, how and when —

B. Have you ever been declared to be an idiot or a lunatic by a court: — ☐ Yes ☐ No

If applicant answers yes, has he subsequently been declared legally sane or competent by a court: — ☐ Yes ☐ No

If yes, when and by what court —

Certificate of eligibility issued—No. —  
Notice of ineligibility issued—No. —

NOTE: FOR FEDERAL REGISTER citations affecting this Appendix A, see List of CFR Sections Affected in this volume.

#### § 801.203 Procedures for filing application.

(a) An applicant may obtain an application at the place and during the times set out in Appendix A for the appropriate political subdivision. An application may be completed only at the place where it was obtained and shall be submitted by the applicant in person to an examiner at that place.

(b) An examiner shall review the application in the presence of the applicant to insure that all questions are answered clearly and completely. If all questions are not answered clearly and completely or if an applicant is not able personally to complete the application in whole or in part because of lack of literacy or otherwise, or has difficulty in doing so, an examiner shall orally examine the applicant and record the pertinent information on the application or otherwise assist the applicant in completing the application.

(c) After an application is completed, an examiner shall require the applicant to take the oath or affirmation prescribed on the application and to sign his name or make his mark thereon.

#### § 801.204 Qualifications requirements.

The qualifications required for listing, prescribed by the OPM after consultation with the Attorney General, for use by an examiner in examining

an applicant for listing on an eligibility list shall be set out in Appendix B to this part and incorporated in and made a part of this section.

### APPENDIX B

This appendix sets out the qualifications required for listing on an eligibility list.

#### ALABAMA

A person is qualified to be listed as an eligible voter in elections in the State of Alabama, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He is 21 years of age.

(2) He is a citizen of the United States and of the State of Alabama.

(3) He will have lived in the State of Alabama for one year, in his county for six months, and in his ward or precinct for three months by the date of the next election.

(4) He has not been convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude, or of vagrancy or being a tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector, or if so convicted he has been subsequently pardoned with restoration of his right to vote specifically expressed in the pardon.

(5) He has not been declared legally insane by a court, or if so declared he has subsequently been declared legally sane or competent by a court.

(6) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

A person who has all the above qualifications is also qualified to be listed as an eligible voter in municipal elections if he will have lived in his city or town for three months by the date of the next election.



GEORGIA

A person is qualified to be listed as an eligible voter in elections in the State of Georgia, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He will be 18 years of age by the date of the next election.

(2) He is a citizen of the United States and of the State of Georgia.

(3) He will have lived in the State of Georgia for 1 year and in his county for 6 months by the date of the next election.

(4) He has not been convicted of treason against the State, embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of Georgia with imprisonment in the penitentiary, or if so convicted he has been subsequently pardoned.

(5) He has not been declared legally insane or idiotic by a court, or if so declared he has been subsequently declared legally sane or competent by a court.

(6) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

LOUISIANA

A person is qualified to be listed as an eligible voter in elections in the State of Louisiana, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

(1) He will be 21 years of age by the date of the next election.

(2) He is a citizen of the United States and of the State of Louisiana.

(3) He will have lived in the State of Louisiana for one year, in his parish for six months, and in his precinct for three months by the date of the next election.

(4)(a) He has not been convicted of any crime punishable by imprisonment in the penitentiary, or if so convicted he has been subsequently pardoned with the express restoration of the franchise, or (b) he has not been convicted of a felony, or if so convicted he has subsequently received a pardon and full restoration of franchise.

(5) He has not been interdicted, that is, declared legally incompetent or insane by a court, or if so interdicted he has been subsequently restored to legal competency or sanity by a court.

(6) He has not been dishonorably discharged from the Louisiana National Guard or the military service of the United States, or if so discharged he has been reinstated.

(7) He is not a deserter from the military services of the United States or the militia of the State of Louisiana, when called forth by the Governor or, in time of invasion, in-

surrection, or rebellion, by the President of the United States, or if such a deserter, he has returned to the command from which he deserted, made good the time lost in desertion, and served out the term of his original enlistment.

(8) He is not an inmate of any charitable institution, except the Soldiers Home and the United States Marine hospital at Carville.

(9) He is not otherwise registered or listed as eligible to vote in the parish in which he applies for listing.

A person who has all the above qualifications is qualified to be listed as an eligible voter in municipal elections if he will have lived in his city or town for four months by the date of the next election.

MISSISSIPPI

A person is qualified to be listed as an eligible voter in elections in the State of Mississippi, except municipal elections, if he has all the following qualifications at the time he applies for listing and takes the required oath or affirmation.

(1) He will be 21 years of age by the date of the next election.

(2) He is a citizen of the United States.

(3) He will have lived in the State of Mississippi for two years by the date of the next election.

(4) He will have lived in his election district or his city, town, village, or municipality for one year by the date of the next election. However, if the person is a minister or the wife of a minister of the Gospel in charge of an organized church, that person is qualified if he or she will have lived in the election district for six months by the date of the next election.

(5) He has not been convicted of arson, bigamy, bribery, burglary, embezzlement, forgery, obtaining money or goods under false pretenses, perjury, or theft, or if so convicted his right to vote has been restored by the legislature.

(6) He has not been declared legally insane by a court, or if so declared he has been subsequently declared legally sane or competent by a court.

(7) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

A person who has all the above qualifications is qualified to be listed as an eligible voter in municipal elections if he will have lived in his city, town, or village for one year by the date of the next election, unless he has, within two years before the next municipal election, been convicted within the municipality of violating the liquor laws of the State or the municipality. However, if the person is a minister or the wife of a minister of the Gospel in charge of an organized church, that person is qualified to be

listed as an eligible voter in municipal elections if he or she will have lived in the city, town, or village for six months by the date of the next election.

#### SOUTH CAROLINA

A person is qualified to be listed as an eligible voter in elections in the State of South Carolina, except municipal elections, if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

- (1) He is 21 years of age.
- (2) He is a citizen of the United States and of the State of South Carolina.
- (3) He will have lived in the State of South Carolina for one year, in his county for six months, and in his precinct for three months by the date of the next election. However, if the person is a minister in charge of an organized church or a teacher in the public schools, or the spouse of such a minister or teacher, that person is qualified if he or she will have lived in the State of South Carolina for six months by the date of the next election.

(4) He has not been convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny, challenging or accepting a challenge to duel with a deadly weapon, or crimes against the election laws, or if so convicted his right to vote has been restored by pardon.

(5) He has not been declared legally insane, idiotic, or incompetent by a court, or if so declared he has subsequently been declared legally sane or competent by a court.

(6) He is not a pauper supported at public expense.

(7) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

A person who has all the above qualifications is also qualified to be listed as an eligible voter in municipal elections if he will have lived in his city or town for four months by the date of the next election.

#### TEXAS

A person is qualified to be listed as an eligible voter in elections in the State of Texas if he has all the following qualifications at the time he applies for listing and if he takes the required oath or affirmation.

- (1) He will be 18 years of age within 60 days after applying for registration.
- (2) He is a citizen of the United States.
- (3) He is a resident of the State of Texas.
- (4) He has not been convicted of a felony, or if so convicted, he has been subsequently

restored to full citizenship and suffrage or pardoned.

(5) He has not been declared an idiot or a lunatic by a court, or if so declared, he has been subsequently declared legally sane or competent by a court.

(6) He is not otherwise registered or listed as eligible to vote in the county in which he applies for listing.

NOTE: For FEDERAL REGISTER citations affecting this Appendix B, see List of CFR Sections Affected in this volume.

#### § 801.205 Action on the application.

At the time of filing the application and in the presence of the applicant, the examiner shall review the application and make such examination as is necessary to determine whether the applicant has the prescribed qualifications. If the applicant has the prescribed qualifications, the examiner shall give him a certificate, on the form prescribed by the OPM, evidencing his eligibility to vote and enter his name on an eligibility list, the form for which is prescribed by the OPM. If the applicant does not have the prescribed qualifications, the examiner shall give him a notice of ineligibility for listing, on the form prescribed by the OPM.

#### § 801.206 Review of notice of ineligibility for listing.

An applicant may obtain a review of a notice of ineligibility for listing by executing the request for review contained on that notice and returning it to the examiner or by filing a written request, either personally or through a representative, with the Examiner (State Supervisor), U.S. Office of Personnel Management, in the State involved at the address set out in Appendix C to this part and incorporated in and made a part of this section. The request shall be submitted within 10 days from the date of the notice of ineligibility for listing. The request shall set forth the applicant's reason for contesting the notice of ineligibility for listing. The Examiner (State Supervisor) shall notify the applicant or his representative and the examiner concerned of his decision. When the Examiner (State Supervisor) finds the applicant has the prescribed qualifications, he shall direct the examiner

concerned to give the applicant a certificate evidencing his eligibility to vote and to enter his name on the eligibility list. There is no administrative appeal from the decision of an Examiner (State Supervisor).

**APPENDIX C**

These are the addresses of each Examiner (State Supervisor), U.S. Office of Personnel Management.

**ALABAMA**

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 75 Spring Street, S.W., Atlanta, Georgia, 30303.

**GEORGIA**

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 75 Spring Street, S.W., Atlanta, Georgia, 30303.

**LOUISIANA**

Examiner (State Supervisor), U.S. Office of Personnel Management, Southwest Region, 610 South Street, Room 804, New Orleans, Louisiana, 70130.

**MISSISSIPPI**

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 802 State Street, Room 403, Jackson, Mississippi, 39201. Address effective December 1, 1979: 75 Spring Street, S.W., Atlanta, Georgia, 30303.

**SOUTH CAROLINA**

Examiner (State Supervisor), U.S. Office of Personnel Management, Southeast Region, 75 Spring Street, S.W., Atlanta, Georgia, 30303.

**TEXAS**

Examiner (State Supervisor), U.S. Office of Personnel Management, Southwest Region, 1100 Commerce Street, Room 4C24, Dallas, Texas, 75242.

(Reorganization Plan No. 2 of 1978 (43 FR 36037))

NOTE: For FEDERAL REGISTER citations affecting this Appendix C, see List of CFR Sections Affected in this volume.

**§ 801.207 Certification and publication of eligibility lists.**

An examiner shall certify and transmit an eligibility list at least once a month to the office of the appropriate election official, with a copy to the At-

torney General and the attorney general of the State. The list shall contain the name of each eligible voter listed since the last list was certified and transmitted. The list shall be made available for public inspection beginning on the last business day of the month and in any event not later than the 45th day before an election, during normal business hours, for one period of 10 consecutive days, at the place where the persons listed filed their applications as set out in Appendix A to this part, except that the list may be made available for public inspection in the same political subdivision at a place other than the place where the persons listed filed their applications when advance notice of this change is posted at the place where the persons listed filed their applications.

[30 FR 12392, Sept. 29, 1965]

**Subpart C—Challenges to Listing on Eligibility List**

**§ 801.301 Scope.**

This subpart prescribes the procedure that governs a challenge to a listing on an eligibility list under the Act.

**§ 801.302 Basis of challenge.**

A challenge to a listing on an eligibility list may be made only on the basis of fraud or that the challenged person does not have the prescribed qualifications.

**§ 801.303 Time and place of challenge.**

A challenge shall be filed within 10 days after the listing of the challenged person is made available for public inspection as provided in § 801.207 by delivering or mailing the challenge to the Examiner (State Supervisor), U.S. Office of Personnel Management, in the State involved at the address set out in Appendix C to this part.

**§ 801.304 Form of challenge.**

(a) A challenge shall be under oath and shall contain:

- (1) The name and address of the OPM office to which it is submitted;
- (2) The date of submission;



(3) The name and address of the challenger;

(4) The name and address of his representative, if any;

(5) The name and address of the challenged person and his certificate number as they appear on the eligibility list;

(6) A written statement setting forth in plain and concise language the facts constituting the grounds for challenging the listing of the challenged person on the eligibility list;

(7) Affidavits of at least two persons (one of whom may be the challenger) with their addresses, stating that they have personal knowledge of the facts that constitute the grounds for challenge and setting forth those facts in plain and concise language. Each affidavit shall be sworn to before a person authorized to administer oaths; and

(8) A certification that service of the challenge on the challenged person has been made as required by paragraph (b) of this section.

(b) The challenger shall file his challenge in triplicate and shall have a copy of it served on the challenged person. That service may be in person or by first-class mail properly addressed with charges prepaid.

**§ 801.305 Rejection and docketing of challenge.**

(a) When a challenge is not timely filed or served or does not meet the requirements of § 801.304, it shall not be entertained but shall be rejected.

(b) When a challenge is not rejected under paragraph (a) of this section, the hearing officer shall place it on the docket.

**§ 801.306 Summary denial of challenge by hearing officer.**

If on review of a challenge a hearing officer determines that the information, even if true and known at the time of listing, would not have disqualified the challenged person, he shall issue a decision denying the challenge without further proceeding and notify the parties of his reasons for this decision.

**§ 801.307 Notice of hearing.**

After docketing, and if not denied under § 801.306, the challenge shall be

set for hearing. The challenger and the challenged person shall be sent a notice of the date, time, and place of the hearing and advised of the rights and duties of the parties including the right to request a subpoena. The notice of hearing shall be dated and the date of the hearing shall not be less than 5 days from the date of that notice. The notice of hearing shall be served on the challenger and the challenged person either personally or by mail.

**§ 801.308 Rights and duties of parties.**

(a) The challenger has the burden of proceeding and proof at the hearing and shall appear personally or with a representative to prosecute the challenge, except that when a continuance is sought the challenger may appear by a representative. If a challenger fails to appear personally to prosecute the challenge, the hearing officer shall issue a decision denying the challenge or make such other disposition as is warranted by the circumstances.

(b) The challenged person has the right to appear at the hearing personally or by or with a representative, and to present witnesses and documentary evidence in his behalf.

**§ 801.309 Continuance.**

A request for a continuance of a hearing shall be filed with the hearing officer at the place and on the day of the hearing. The hearing officer shall not grant a continuance except under extraordinary circumstances.

**§ 801.310 Hearing.**

A hearing shall be open to the public and held at the time and place specified in the notice of hearing. A hearing shall be recorded by an official reporter designated by the OPM, under the supervision of the hearing officer. A party may obtain a copy of the transcript from the official reporter at a rate not in excess of the maximum rate fixed by contract between the OPM and the reporter.

**§ 801.311 Powers of hearing officer.**

In addition to the powers otherwise vested in a hearing officer by this subpart, a hearing officer shall have the power to:



- (a) Administer oaths and affirmations;
- (b) Issue and quash subpoenas;
- (c) Regulate the course of the hearing;
- (d) Rule on offers of proof;
- (e) Permit a party to withdraw from a hearing on a showing of good cause;
- (f) Limit the number of witnesses whose testimony would be cumulative;
- (g) Deny a challenge for failure to prosecute;
- (h) Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing; and
- (i) Take any other action in the course of the hearing consistent with law that is necessary to carry out the spirit and intent of the Act.

§ 801.312 Witnesses.

- (a) A witness shall testify under oath or affirmation and shall be subject to cross-examination.
- (b) A witness who is summoned and responds is entitled to the same witness and mileage fees as are paid for like service in the courts of the United States. The party at whose instance the testimony is taken shall pay the witness and mileage fees.

§ 801.313 Subpoena.

- (a) On the request of a party and for good cause shown, a hearing officer may issue a subpoena for the appearance of a witness or for the production of documentary evidence.
- (b) A hearing officer may quash a subpoena for good cause shown.
- (c) The party at whose request a subpoena is issued is responsible for arranging for service. The officer or person making service shall show the original subpoena to the person served, read the subpoena to him if he is unable to read, and deliver a copy of the subpoena to him.
- (d) When a U.S. Marshal or his deputy serves a subpoena, he shall evidence the service by his return on the subpoena. When someone other than a U.S. Marshal or his deputy serves a subpoena, the person serving the subpoena shall make an affidavit, stating the date, time, and the manner of service, and shall return the affidavit on, or with, the original subpoena in ac-

cordance with the form thereon. When the U.S. Marshal, his deputy, or other person, as appropriate, cannot serve the subpoena, he shall state his reason for the failure on the original subpoena. When the person named in the subpoena accepts service of the subpoena in writing, no other evidence of return is necessary. The person responsible for serving a subpoena shall return the original subpoena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, to the officer presiding at the hearing at which the person subpoenaed is required to appear.

§ 801.314 Evidence.

- (a) The application of the challenged person is prima facie evidence that he has the qualifications that are stated in the application.
- (b) Rules of evidence are not strictly applied but the hearing officer shall exclude irrelevant or unduly repetitious evidence.
- (c) Each exhibit of a documentary character shall be submitted to the hearing officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the hearing officer.

§ 801.315 Decision.

The hearing officer who presided at the hearing, unless he has become unavailable, shall decide the case on the record. If no hearing is held, the hearing officer to whom the challenge was assigned shall decide the case on the record. The decision shall be in writing and shall state the reasons or basis for the decision. Copies of the decision shall be served on the parties. The decision shall be issued not more than 15 days after the challenge is docketed under § 801.305. The record, including the decision, shall be certified as true and complete by the hearing officer and forwarded to the Examiner (State Supervisor), U.S. Office of Personnel Management in the State involved at the address set out in Appendix C to this part. It shall be available to interested persons at that office.

**§ 801.316 Action after challenge is sustained.**

When a hearing officer sustains a challenge, he shall, after the courts have finally sustained his decision or the time for petitioning for a court review of that decision has expired, instruct an examiner to remove the name of the challenged person from the eligibility list and cancel that person's certificate evidencing his eligibility to vote. The examiner shall notify the challenged person, the appropriate election official, the Attorney General, and the attorney general of the appropriate State of his action.

**§ 801.317 Appeal.**

There is no administrative appeal from the decision of a hearing officer or from any of his rulings. A petition for review of the decision of a hearing officer may be filed in court as provided in the Act.

**Subpart D—Removals From Eligibility List****§ 801.401 Scope.**

The subpart prescribes the bases and procedures for removals from eligibility lists under the Act.

**§ 801.402 Bases for removals.**

An examiner shall remove the name of a person from an eligibility list:

(a) Pursuant to the instruction of a hearing officer under § 801.316;

(b) Pursuant to the order of a court having jurisdiction under the Act;

(c) When the examiner determines that the listed person has lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States and in accordance with the instructions concerning loss of eligibility to vote prescribed by the OPM after consultation with the Attorney General which shall be set out in Appendix D to this part and incorporated in and made a part of this section.

**APPENDIX D**

This appendix sets out the bases for loss of eligibility to vote and removal from an eligibility list.

**ALABAMA**

A person loses his eligibility to vote in elections in the State of Alabama if:

(1) He is no longer a legal resident of the State of Alabama or the county for which he is listed (a person may not vote in a county or precinct in which he is not a resident, but when a person removes from one precinct or ward to another precinct or ward within the same county, town, or city within three months before an election, he may vote in the precinct or ward from which he so removed);

(2) He dies;

(3) He is convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on wife, bigamy, living in adultery, sodomy, incest, rape, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude, or vagrancy or being a tramp, or selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector, and has not been subsequently pardoned with restoration of his right to vote specifically expressed in the pardon;

(4) He is declared legally insane by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States or the State of Alabama.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

**GEORGIA**

A person loses his eligibility to vote in elections in the State of Georgia if:

(1) He is no longer a legal resident of the State of Georgia or the county for which he is listed;

(2) He dies;

(3) He is convicted of treason against the State, embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of Georgia with imprisonment in the penitentiary, and has not been subsequently pardoned;

## App. D

(4) He is declared legally insane or idiotic by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States or the State of Georgia.

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

### LOUISIANA

A person loses his eligibility to vote in elections in the State of Louisiana if:

(1) He is no longer a legal resident of the State of Louisiana or the parish for which he is listed, however, the removal from one parish to another does not deprive a person of the right to remain listed in the parish from which he has removed for the purpose of voting for district officers to be elected in a district which includes the parish to which he has removed, or for State officers, whether the parish is in the same district or not, until he has acquired the right to register or be listed and vote for such officers in the parish to which he has removed (the removal of a person from one precinct to another in the same parish does not deprive him of his right to remain listed in the parish from which he has removed until three months after the removal);

(2) He dies;

(3)(a) He is convicted of any crime punishable by imprisonment in the penitentiary and has not been subsequently pardoned with the express restoration of the franchise, or (b) he is convicted of a felony and has not subsequently received a pardon and full restoration of franchise.

(4) He is declared legally incompetent or insane by a court and has not been subsequently restored to legal competency or sanity by a court;

(5) He is dishonorably discharged from the Louisiana National Guard or the military service of the United States and has not been reinstated;

(6) He deserts from the military service of the United States or the militia of the State of Louisiana, when called forth by the Governor or, in time of invasion, insurrection, or rebellion, by the President of the United States and has not returned to the command from which he deserted, made good the time lost in desertion, and served out the term of his original enlistment;

(7) He becomes an inmate of any charitable institution, except the Soldiers Home and the United States Marine Hospital at Carville; or

(8) He loses his citizenship in the United States or the State of Louisiana.

## Title 45—Public Welfare

A person loses his eligibility to vote in municipal elections only, if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of such residence does not result in loss of eligibility in any other election.

### MISSISSIPPI

A person loses his eligibility to vote in elections in the State of Mississippi if:

(1) He is no longer a legal resident of the State of Mississippi or the election district for which he is listed;

(2) He dies;

(3) He is convicted of arson, bigamy, bribery, burglary, embezzlement, forgery, obtaining money for goods under false pretenses, perjury, or theft and has not had his right to vote restored by the legislature;

(4) He is declared legally insane by a court and has not been subsequently declared legally sane or competent by a court; or

(5) He loses his citizenship in the United States.

A person loses his eligibility to vote in municipal elections only, if he (1) is no longer a legal resident of his city or town, or (2) if he has, within two years before the next municipal election, been convicted within the municipality of violating the liquor laws of the State or the municipality, or (3) is at the time of the municipal election in default for taxes due the municipality for the two preceding years. Loss of eligibility to vote in a municipal election because of change of such residence or such conviction or such default in taxes does not result in loss of eligibility in any other election.

### SOUTH CAROLINA

A person loses his eligibility to vote in elections in the State of South Carolina if:

(1) He is no longer a legal resident of the State of South Carolina or the county for which he is listed;

(2) He dies;

(3) He is convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny, challenging or accepting a challenge to duel with a deadly weapon, or crimes against the election laws and his right to vote has not been restored by pardon;

(4) He is declared legally insane, idiotic or incompetent by a court and has not subsequently been declared legally sane or competent by a court;

(5) He becomes a pauper supported at public expense; or



(6) He loses his citizenship in the United States or the State of South Carolina.

A person loses his eligibility to vote in municipal elections only if he is no longer a legal resident of his city or town. Loss of eligibility to vote in a municipal election because of change of residence does not result in a loss of eligibility in any other election.

(7) He fails to register in accordance with State law requiring general registration of all previously registered voters every 10th year. However, he does not lose his eligibility to vote if he has attempted to register in accordance with State law and his application was rejected without legal cause or solely because his prior registration was by listing by an Examiner.

#### TEXAS

A person loses his eligibility to vote in elections in the State of Texas if:

(1) He is no longer a citizen of the United States;

(2) He is no longer a resident of the State of Texas;

(3) He dies;

(4) He is convicted of a felony;

(5) He is adjudged by a court of being mentally incompetent; or

(6) He has a change of name through marriage or judgment of a court, and fails to present his registration certificate to the registrar with a signed request that his name be changed on the registration records.

A person loses his eligibility to vote in elections of the county, municipality, or other political subdivision only, if he is no longer a resident of the subdivision on the day of the election. Loss of eligibility to vote in an election of a county, municipality, or other subdivision does not result in loss of eligibility in any other elections.

#### TEXAS

Forma Aprobada OMB No. 50R0592

#### Solicitud Para Ejercer El Derecho Del Voto

La información que se le pide a continuación es con el objeto de determinar si usted es elegible para votar. Si se encuentra que usted es elegible, su nombre será certificado para que los oficiales apropiados del Estado lo agreguen a las listas oficiales para la votación. La autorización para solicitar la siguiente información está basada en el Acta del Derecho de Votar, enmendada. No se le exige que responda a las preguntas que se le harán a continuación, pero su cooperación es necesaria si usted desea que se le clasifique elegible para votar.

Instrucciones para el solicitante: Haga el favor de llenar los espacios en blanco con la información que se le pide. Si necesita ayuda para contestar alguna pregunta, el examinador le ayudará.

1. Nombre \_\_\_\_\_ (Primer nombre) (Segundo nombre) (Apellido)

Si es casada escriba aquí su apellido de soltera \_\_\_\_\_

2. Sexo Masculino: ☐ Femenino: ☐

3. Direccion permanente: \_\_\_\_\_ (Calle y no. de su apartamento, calle rural o localida (no caja postal) Ciudad \_\_\_\_\_ Zip code \_\_\_\_\_

4. Lugar donde votara: (si lo sabe) \_\_\_\_\_

5. Direccion postal si es diferente de la mencionada arriba: Calle o Apartado Postal \_\_\_\_\_ Ciudad \_\_\_\_\_ Estado \_\_\_\_\_ Zip code \_\_\_\_\_

6. Lugar de nacimiento: Ciudad \_\_\_\_\_ o Condado \_\_\_\_\_ Estado \_\_\_\_\_ o Pais \_\_\_\_\_

7. Fecha de nacimiento: Mes \_\_\_\_\_ Dia \_\_\_\_\_ Ano \_\_\_\_\_ Si usted es Americano naturalizado, de el nombre de la corte o la localidad donde se naturalizo: \_\_\_\_\_

8. Registracion previa: Si Ud. esta actualmente registrado en otro condado de Texas, de el nombre de ese condado \_\_\_\_\_ Cual fué su última dirección: \_\_\_\_\_ (Ciudad) \_\_\_\_\_ (Estado) \_\_\_\_\_ (Zip code) \_\_\_\_\_

Es voluntario declarar su número de Seguro Social y su número de teléfono. Si Ud. prefiere declarar sólo uno de esos números o ninguno de los dos, está bien, eso NO será motivo para que su solicitud se considere incompleta. Esos números solo servirán para mantener la exactitud y la integridad de los archivos de éste registro.

Número de Seguro Social \_\_\_\_\_

Número de su teléfono \_\_\_\_\_

Si usted, sabiéndolo, da información falsa en esta solicitud, está cometiendo un crimen Federal que puede ser castigado con una multa o con encarcelamiento.

PARE AQUI.

LLEVE ESTA FORMA AL EXAMINADOR.

Solemnemente juro (o afirmo) que yo, el solicitante, soy de 18 años de edad o mayor, o que cumpliré 18 años dentro de 60 días después de la fecha en que he presentado esta solicitud, y que soy ciudadano de los Estados Unidos, mantengo residencia legal en este Condado, he llenado todos los requisitos legales y entiendo que el hecho de dar información falsa con el objeto de que se me registre para la votación es un crimen.

Firma (o marca) del solicitante \_\_\_\_\_

Firma del agente\* \_\_\_\_\_

\*El agente debe estar registrado para votar y debe ser: (Encierre en un círculo la palabra correspondiente)

Esposo—Madre—Padre—Hijo—Hija

Jurado (o afirmado) y firmado en mi presencia en esta fecha: \_\_\_\_\_

Examinador -----  
*Oficina de Administracion de Personal de*  
*los Estados Unidos de America*  
 CSC Form 805-T  
 abril 1976

INFORMACION ADICIONAL

La ley del Estado de Texas dice que una persona que ha sido convicta por haber cometido un crimen y que no ha sido perdonada, o una persona que ha sido declarada lunática o idiota y por lo tanto no se le considera competente, no está calificada para votar. Por esta razón las siguientes preguntas deben ser contestadas.

A. Ha sido Ud. alguna vez convicto por haber cometido un crimen: Si ☐ No ☐  
 Si su respuesta es si, diga cual fué el crimen

Dónde y cuando fué usted convicto -----  
 Fué esta convicción por un crimen que lo descalifica para votar? Si ☐ No ☐

Si su respuesta a la pregunta anterior es afirmativa, ha sido usted perdonado y se le ha devuelto su derecho de votar? Si ☐ No ☐

Si ha sido perdonado, dónde y cuándo? ---  
 B. Ha sido usted declarado por una corte idiota o lunático? Si ☐ No ☐

Si su respuesta es si, fué usted despues declarado por una corte sano o competente? Si ☐ No ☐

Si su respuesta es si, diga cuando y en cual corte -----

Número del certificado de elegible -----

Número del certificado de inelegible -----

APENDICE B

Este apéndice enumera las calificaciones que re requieren para sercolocado en una lista de personas elegibles para votar.

TEXAS

Una persona es considerada calificada para ser puesta en la lista de elegibles para votar en el Estado de Texas si llena los siguientes requisitos al momento de hacer su solicitud y si presta juramento (o afirmación) que se requiere.

(1) Deberá cumplir 18 años de edad dentro de0 dias despues de haber hecho la solicitud.

(2) Debe ser ciudadano de los Estados Unidos.

(3) Debe ser residente del Estado de Texas.

(4) No ha sido convicto por un crimen, o si fué convicto alguna vez, se le han desde entonces restaurado sus derechos de ciudadanía y sufragio o ha sido perdonado.

(5) No ha sido declarado por la corte come idiota o lunático, y si lo fué, ha side despues declarado legalmente sano o competente por una corte.

(6) No está registrado para votar en ningún otro lugar de este Condado.

APENDICE D

Este apéndice enumera las razones por las cuales puede usted perder el derecho a votar o por las cuales se le puede quitar de la lista de elegibles para votar.

TEXAS

Una persona pierde su derecho a votar en las elecciones en el Estado de Texas si:

(1) Ha dejado de ser ciudadano de los Estados Unidos;

(2) Ha dejado de ser un residente del Estado de Texas;

(3) Ha fallecido;

(4) Ha sido convicto por haber cometido un crimen;

(5) Ha sido declarado en la corte de ser mentalmente incompetente;

(6) Ha cambiado de nombre por razones de matrimonio o por otros procedimientos legales en una corte y ha fallado de presentar el certificado correspondiente al encargado, dicho certificado debe ser acompañado de una petición firmada pidiendo que su nombre sea cambiado en los archivos de registro para votar.

Una persona pierde su derecho a votar en las elecciones del condado, la municipalidad o cualquier otra sub-division política solamente, si esa persona ha dejado de ser residente de ese lugar el dia de la elección. La pérdida de su elegibilidad para votar en una elección de un condado, municipalidad o cualquier otra subdivisión política no resulta en la pérdida del derecho a votar en otras elecciones.

Autoridad: Los requisitos enumerados en esta Parte 801 emitidos bajo las secciones 7, 9, 79, Stat. 440; 42 U.S.C. 1973e, 1973g.

NOTE: FOR FEDERAL REGISTER citations affecting this Appendix D, see List of CFR Sections Affected in this volume.

§ 801.403 Procedure for removals determined by examiners.

An examiner may remove the name of a listed person as authorized by § 801.402(c) only after:

(a) Giving the person a notice of the proposed removal of his name stating the reason why the removal is proposed and offering the person an opportunity to answer the notice of proposed removal in person or in writing or both within ten days after his receipt of that notice; and

(b) Considering all available evidence concerning the person's loss of eligibility to vote, including any timely answer submitted by the person.

**§ 801.404 Notification of removals.**

When an examiner removes the name of a person from an eligibility list he shall notify the person, the appropriate election officials, the Attorney General, and the attorney general of the State of that removal and the reason therefor.

**Subpart E—Voting Complaint**

**§ 801.501 Scope.**

This subpart prescribes the procedure for filing and processing a complaint under the Act that a person was not permitted to vote.

**§ 801.502 Making a complaint.**

A person who has been listed on an eligibility list or registered by an appropriate election official and who is eligible to vote but has not been permitted to vote may make a complaint

regarding that denial to an examiner for the political subdivision where the denial occurred. The complaint may be either oral or in writing and must be made within 48 hours after the closing of the polls.

**§ 801.503 Processing a complaint.**

The examiner to whom a complaint is made shall promptly ascertain whether the complaint is well founded. If the examiner determines the complaint is not well founded he shall notify the person who complained of his determination and take no further action on the complaint. If the examiner determines that the complaint is well founded the examiner shall notify the person and the Attorney General of his determination and of the reason for that determination and furnish the Attorney General with any papers or evidence relating to the complaint.



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## CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

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NOTE: Pursuant to section 682(e) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The Community Services Administration (CSA) was terminated, effective September 30, 1981. Certain former functions of CSA are now administered by the Department of Health and Human Services (DHHS). For a document detailing this transfer of functions, see 46 FR 49211, October 6, 1981.

**PART 1010—CIVIL RIGHTS PROGRAM  
REQUIREMENTS OF CSA GRANT-  
EES; CIVIL RIGHTS REGULATIONS**

**Subpart A—General**

Sec.

- 1010.1-1 Purpose.
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- 1010.1-3 Definitions.

**Subpart B—Discrimination Prohibited**

- 1010.10-1 General.
- 1010.10-2 Discrimination prohibited—specific discriminatory actions prohibited.
- 1010.10-3 Discrimination prohibited—employment practices.

**Subpart C—Responsibilities of Grantee**

- 1010.20-1 Assurances.
- 1010.20-2 Required grantee civil rights program.
- 1010.20-3 Data and information requirements.

**Subpart D—Conduct of Investigations and  
Reviews**

- 1010.30-1 Pre-award compliance reviews.
- 1010.30-2 Post-award reviews.
- 1010.30-3 Complaint investigations.
- 1010.30-4 Back-pay award.
- 1010.30-5 Complaints filed with State and local commissions or the U.S. Equal Employment Opportunity Commission.
- 1010.30-6 Intimidation.
- 1010.30-7 Adjustment of time limits.

**Subpart E—Procedure for Effecting Compliance**

- 1010.40-1 General.
- 1010.40-2 Termination of or refusal to grant or to continue financial assistance.
- 1010.40-3 Hearings.
- 1010.40-4 Decisions and Notices.
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**Subpart F—Miscellaneous**

- 1010.50-1 Role of CSA officials.
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- 1010.50-3 Effect on other regulations, forms and instructions.
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**APPENDIX A—FEDERAL FINANCIAL ASSISTANCE  
TO WHICH THIS PART APPLIES FUNDING  
AUTHORITIES UNDER THE ECONOMIC OP-  
PORTUNITY ACT OF 1964, AS AMENDED**

**APPENDIX B—ACTIVITIES TO WHICH THIS  
PART APPLIES WHEN A PRIMARY OBJEC-  
TIVE OF THE FEDERAL FINANCIAL ASSIS-  
TANCE IS TO PROVIDE EMPLOYMENT**

**APPENDIX C—APPLICATION OF PART 1010 TO  
FEDERAL FINANCIAL ASSISTANCE OF COM-  
MUNITY SERVICES ADMINISTRATION**

**AUTHORITY:** Secs. 602, 624, 603, 223 and 244 (8) of The Economic Opportunity Act, of 1964, as amended 78 Stat. 528, 42 U.S.C. 2942; 86 Stat. 696, 42 U.S.C. 2971c; 78 Stat. 530, 42 U.S.C. 2943; 81 Stat. 701, 42 U.S.C. 2837; secs. 602 and 603, Title VI, Civil Rights Act of 1964, 78 stat. 252, 42 U.S.C. 2000d-1; 78 Stat. 253, 42 U.S.C. 2000d-2; E.O. 11764, 28 CFR Parts 42 and 50.3.

**SOURCE:** 44 FR 70145, Dec. 6, 1979, unless otherwise noted.

**Subpart A—General**

**§ 1010.1-1 Purpose.**

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and Section 624 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c, to the end that:

(a) No person on the basis of race, color, or national origin, be excluded from participation in or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Community Services Administration (CSA).

(b) No person on the ground of sex be excluded from participation in, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

(c) No person with responsibilities in the operation of a program receiving financial assistance under the Economic Opportunity Act of 1964, as amended will discriminate with respect to any such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

**§ 1010.1-2 Applicability.**

(a) This part applies to all grantees and their delegate agencies receiving financial assistance from CSA. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Any assistance to any individual who is the ultimate beneficiary under any such program.

(b) This part also applies to any program which is funded and adminis-

tered by CSA with funds transferred from another Federal agency to CSA.

#### § 1010.1-3 Definitions.

As used in this part—

(a) "CSA" means the Community Services Administration, and includes all of its organizational units.

(b) "Director" means the Director of the Community Services Administration.

(c) "Associate Director for Human Rights" means the CSA official responsible for implementing and enforcing CSA's Civil Rights program.

(d) "Responsible CSA official" with respect to any program receiving Federal financial assistance means the Director or other official of CSA who by law or by delegation has the principal responsibility within CSA for the administration of the law extending such assistance.

(e) "Title VI" means Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-2000d-4.

(f) "United States" means the states of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Cana Zone, and the Territories and possessions of the United States, and the term "State" means any one of the foregoing.

(g) "Federal financial assistance" includes (1) grants, loans, or donation of Federal funds, (2) the grant or donation of Federal property and interest in property, (3) the detail of Federal personnel, (4) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, at a nominal consideration, or at a consideration which is reduced of the purpose of assisting the grantee, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

(h) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through an employee of the grantee or provided by others through contracts or other ar-

rangements with the grantee, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal resources or such non-Federal resources.

(i) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein. The provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(j) "Grantee" means any state, political subdivision, instrumentality of any state or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any state, to whom Federal financial assistance is extended directly or through another grantee. Such term does not include any ultimate beneficiary under a federally assisted program.

(k) "Grantee Board" means the entity responsible for the administration of funds received pursuant to the Economic Opportunity Act of 1964, as amended.

(l) "Applicant" means one who submits an application, request, or plan required to be approved by CSA or by a grantee as a condition of eligibility for Federal financial assistance. The term "application" means any such application, request or plan.

(m) In complying with the requirements of this part, it will be necessary to refer to persons by race, color or national origin. The following designa-



tions will be used by grantees in reporting participant characteristics:

(1) Black, not of Hispanic origin. A person having origins in any of the black racial groups of Africa;

(2) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(3) Asian or Pacific Islander. A person having origins in any of the original people of the Far East, Southeast Asia; the Indian Subcontinent, or the Pacific Islands. The area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa;

(4) American Indian or Alaskan Native. A person who has origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition;

(5) White, not of Hispanic origin. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(6) Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis; and

(7) Paragraphs (m) (1) through (7) of this section are in conformity with Directive #15 of the Office of Federal Statistical Policy and Standards which replaced OMB Directive A-46.

#### Subpart B—Discrimination Prohibited

##### § 1010.10-1 General.

(a) No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefit of or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

(c) No person with responsibilities in the operation of a program receiving financial assistance under the Eco-

nomic Opportunity Act of 1964, as amended, will discriminate with respect to any such program because of race, creed, color, national origin, sex, political affiliation or beliefs.

(d) An individual shall not be deemed subjected to discrimination by reason of his/her exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, sex or national origin different from his/hers, for example, programs funded exclusively to serve on-reservation Indians.

##### § 1010.10-2 Discrimination prohibited— Specific discriminatory actions prohibited.

(a) A grantee under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, sex, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any manner related to his/her receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services, or otherwise afford him/her an opportunity to do so which is different from that afforded others under the program, including the opportunity to participate in the program as an em-

ployee to the extent that employment practices are covered in § 1010.10.3; or

(7) Deny any person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(b) A grantee, in determining the type of services, financial aid, or other benefits or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under or on such program, or the class of individuals to be afforded an opportunity to participate in any such program may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, or national origin, or have the effect of substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

(c) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground of race, color, sex, or national origin or with the purpose or effect of substantially impairing the accomplishment of the objectives of this part.

(d) The enumeration of specific forms of prohibited discrimination in this subpart does not limit the generality of this subpart's prohibition.

(e) In administering a program in which the grantee has previously discriminated against persons on the ground of race, color, sex, or national origin, the grantee must take affirmative action to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a grantee, in administering a program may take affirmative action to overcome the effects or conditions which result in limiting participation by persons of a particular race, color, sex, or national origin.

**§ 1010.10-3 Discrimination prohibited—  
Employment practices.**

(a) Where a primary objective of the Federal financial assistance is to provide employment, a grantee may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities). This prohibition applies where a primary objective of the Federal financial assistance is:

(1) To reduce unemployment or to help individuals through employment to meet subsistence needs;

(2) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(3) To provide work experience which contributes to the education or training of individuals; or

(4) To provide remunerative activity to individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market.

(b) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulations, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(c) Where a program receives financial assistance under the Economic Opportunity Act of 1964, as amended, a grantee may not (directly or through contractual or other arrangements):

(1) Subject an individual to discrimination on the basis of sex in its employment practices in connection with the program; and

(2) In connection with any positions funded in whole or in part with funds made available under the Act, subject an individual to discrimination on the basis of race, creed, color, national origin, sex, political affiliation or beliefs.

(d) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

(e) Enforcement of Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part with respect to covered employment practices shall not be superseded by state and local merit systems relating to the same grantee.

### Subpart C—Responsibilities of Grantee

#### § 1010.20-1 Assurances.

(a) *Economic Opportunity Assurance.* Every application for financial assistance for a program under the Economic Opportunity Act of 1964, as amended, as well as every grant, contract, or agreement with respect to such program shall specifically provide:

(1) That no person with responsibilities in the operation of such programs will discriminate with respect to any such program on the basis of race, creed, color, national origin, sex, political affiliation or beliefs; and

(2) That compliance with such provision shall be determined by this part.

(b) *General.* Every application for Federal financial assistance to a program to which this subpart applies shall, as a condition to the extension of any Federal assistance, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by this part. In the case where Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the grantee, or, in the case of

a subsequent transfer, the transferee, for the period during which the property is used for a purpose involving the provision of similar services and benefits, or for as long as the grantee retains ownership or possession of the property, whichever is longer. The Associate Director for Human Rights or his/her designee shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(c) *Real property.* In the case of real property, structures or improvements thereon, or interest therein, which were acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the grantee retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is acquired or improved with Federal financial assistance, the grantee shall agree to include a covenant assuring nondiscrimination in any subsequent transfer of such property. Where the property is obtained from the Federal government, such covenant may also include a condition coupled with a right to be reserved by CSA to have title to the property revert to the Federal government in the event of the breach of the covenant where at the discretion of the Associate Director for Human Rights or his/her designee such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such



event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Associate Director for Human Rights or his/her designee may agree, upon written request of the transferee to accomplish such financing, and upon such conditions as he/she deems appropriate, to forebear the exercise of such right to have title revert to CSA for so long as the lien of such mortgage or other encumbrance remains effective.

(d) *Elementary and Secondary Schools.* In the case of any program for the benefit of elementary or secondary school students which, as a necessary part of such program, utilizes to a substantial extent the facilities of an elementary or secondary school or school system, the requirements of Section 1010.20-1 shall be deemed to be satisfied if such school or school system:

(1) Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order; or

(2) Submits a plan for the desegregation of such school or school system which the Department of Health, Education and Welfare determines is adequate to accomplish the purposes of Title VI and this part within the earliest practicable time, and provides assurances that it will carry out such plan. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform with such final order, including any future modification of such order.

The provisions of this paragraph do not apply to programs for pre-school children.

(e) *Institutions of Higher Education.* In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this paragraph shall

extend to admission practices and to all other practices relating to the treatment of students. The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the institution establishes, to the satisfaction of the Associate Director for Human Rights or his/her designee that the institution's practices in designated parts or programs of the institution in no way affect the beneficiaries of or participants in the programs for which Federal financial assistance is sought. If in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

#### § 1010.20-2 Required grantee civil rights program.

(a) To be eligible for funding, each CSA grantee shall have an affirmative action plan approved by the Associate Director for Human Rights or his/her designee which shall include the following:

(1) A written Equal Opportunity Policy;

(2) An Equal Opportunity Committee;

(3) An Equal Opportunity Officer;

(4) A written discrimination complaint procedure at a minimum incorporating the procedures in Subpart D, § 1010.30-3.

(5) A data-collection, record-keeping and reporting system to provide the information required by this part.

(6) A comprehensive self-analysis, which shall include a comparison of the provision of benefits on the basis of race, sex, and national origin as to the eligible racial, sexual, and national origin population.

This analysis shall also include a comparison of the grantee's employment



by race, sex and national origin to the racial, sexual, and national origin characteristics of the relevant workforce. Where significant disparities are found, the recipient shall determine the reasons and, if appropriate, set forth corrective actions.

(b) The recipient of CSA financial assistance is required to implement its CSA-approved affirmative action plan and to ensure compliance with this part. At a minimum, the following requirements must be met:

(1) Each grantee board shall formally adopt an Equal Opportunity Policy and establish an Equal Opportunity Committee which shall reflect the composition of the board in regard to representation of the public, private and low-income sectors.

(2) The Equal Opportunity Committee shall review the determinations of the Equal Opportunity Officer (EOO) regarding complaints of discrimination and shall oversee the enforcement of the grantee's civil rights program.

(3) Grantees shall have at least one EOO, who shall report directly to the Board of Directors on EO matters, with responsibility for the civil rights program required by this part and such additional personnel as are necessary to carry out the requirements of this part. The EOO shall not be the Executive Director, Deputy Director or Personnel Officer. The Regional Human Rights Chief will make the determination whether the EOO will be full-time or part-time.

(4) The EOO shall undergo training as prescribed by CSA. All expenses incurred by such training shall be borne by the grantee.

(5) The EOO shall be granted the authority to carry out the following activities:

(i) Receive and attempt to resolve complaints of discrimination;

(ii) Provide aggrieved persons with information and advice on equal opportunity procedures including local, state, and Federal redress procedures, and notification of the filing deadlines for Equal Employment Opportunity Commission complaints, where applicable;

(iii) Take other steps which may assist in the resolution of a problem,

prior to the filing of a formal complaint;

(iv) Assist, if requested by a complainant, in preparing a formal complaint to CSA of alleged discrimination based on race, color, creed, sex, national origin, age, handicap, political affiliation or beliefs; and

(v) Provide staff leadership in developing, implementing, and evaluating the grantee's Affirmative Action Plan (AAP).

(6) Grantees shall display, in conspicuous places, posters which summarize the rights of the employees, program participants and beneficiaries under Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part. Such posters shall describe the functions of the EOO and the procedures for filing complaints of discrimination, including the right to complain directly to CSA.

(7) In addition to the posters, each grantee shall make available information regarding the provisions of this part and its applicability to the program under which the grantee receives Federal financial assistance and make such information available in such manner as the Associate Director for Human Rights or his/her designee finds necessary to apprise such persons of the protections against discrimination assured them by Title VI, the Economic Opportunity Act, and this part.

(8) Grantee shall make its posters and other material available in a language other than English where a significant number or proportion of the population eligible to be served or likely to be directly affected by Federally assisted program need services in another language. The Associate Director for Human Rights or his/her designee will determine when publication in a language other than English is necessary.

#### § 1010.20-3 Data and information requirements.

(a) Each grantee shall collect, maintain, and, upon request of CSA, submit the information set forth in this section. All of the information set forth shall be collected unless the Associate

Director for Human Rights or his/her designee grants a written exemption to any information requirement for good cause shown by the grantee.

(b) To the extent that CSA has supplied or prescribed forms for the following information such forms shall be utilized by the grantee.

(c) Grantees shall collect and maintain the following information:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of race, color, sex or national origin.

(2) The population eligible to be served by race, color, sex or national origin.

(3) The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying services to any persons on the basis of race, color, sex or national origin.

(4) The present or proposed membership by race, color, sex and national origin in any policy making or advisory body which is an integral part of the program.

(5) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary adverse impact on persons on the basis of race, color, sex or national origin.

(6) Data regarding covered employment, including use or planned use of bilingual public contact employees serving the beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English.

(7) A brief description of any of its pending applications to other Federal agencies for assistance and of assistance being provided at the time of the application or requested report.

(8) A statement describing any civil rights compliance reviews regarding the applicant or grantee conducted during the two-year period before the applicant or report, and the results of those reviews.

(d) In addition to the data and information required in § 1010.20-3(c)(1)-(8), each applicant or grantee shall:

(1) Promptly notify CSA of any lawsuits filed against the applicant or grantee alleging discrimination on the basis of race, color, sex or national origin,

(2) Maintain a log of complaints under Title VI and this part identifying each complainant by race, color, sex or national origin, the nature of the complaint, the date the complaint was filed, the date the grantee's investigation was completed and the disposition and the date of disposition; and

(3) Where CSA determines that it is necessary and appropriate for the enforcement of Title VI or this part, additional data such as demographic maps, the racial or sexual composition of affected neighborhoods, or census data will be required, however, only to the extent that the information is readily available or the requirement can be complied with by reasonable effort.

(e) *Access to Sources of Information.* Each grantee shall permit access by the responsible CSA official or his/her designee during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a grantee is in the exclusive possession of any other agency, institution or person and that agency, institution or person fails or refuses to furnish this information, the grantee shall set forth in writing the efforts it has made to obtain the information and provide this information to the CSA official requesting such information.

#### **Subpart D—Conduct of Investigations and Reviews**

##### **§ 1010.30-1 Pre-award compliance reviews.**

(a) Prior to approval of financial assistance, all applications for financial assistance shall be reviewed by the Associate Director for Human rights or his/her designee, who will make a written determination as to whether the applicant is in compliance with Title VI, section 624 of the Economic

Opportunity Act of 1964, as amended, and the requirements of this part. The basis for such a determination shall be submission of an assurance of compliance and a review of the compliance data and information submitted by the applicant, and any relevant compliance review reports on file with CSA. Where a determination cannot be made from this data, the Office of Human Rights will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, communicating with local government officials or protected class organizations and field reviews.

(b) No application shall be approved unless it is determined that the applicant is in compliance with Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part or the applicant has agreed in writing to take necessary enumerated steps within a stated period of time to come into compliance. Such an agreement must be approved by the Associate Director for Human Rights and made a part of the conditions of the grant.

(c) If the grantee fails or refuses to enter into such an agreement, the Associate Director for Human rights shall notify the recipient and the Assistant Attorney General for Civil Rights in writing of:

(1) The preliminary findings setting forth the reasons for the applicant's noncompliance;

(2) The actions necessary to come into compliance; and

(3) The fact that the applicant has 10 days to come into compliance and that the applicant may provide during this time a documentary submission responding to, rebutting, or denying the allegations raised in the notice to them.

(d) If within this 10-day period the applicant has not complied with the actions set forth to come into compliance, or voluntary compliance has not been secured, or has not satisfactorily rebutted the allegations, the Associate Director for Human Rights shall make a formal determination of compliance, notify the grantee and the Assistant Attorney General for Civil Rights, and institute proceedings under Subpart E.

(e) CSA shall defer action on applications for assistance during the pendency of enforcement proceedings under this section.

§ 1010.30-2 Post-award review.

(a) Each grantee shall submit an annual report which will contain the compliance information specified in § 1010.20-3.

(b) The Office of Human Rights will periodically conduct compliance reviews of selected grantees.

(c) The Office of Human Rights shall seek to review those grantees which have the greatest disparity in the delivery of services or which appear to have the most serious employment problems as defined by § 1010.10-3. Selection for review shall be made on the basis of the following factors:

(1) The relative disparities between the percentage of the eligible minority or female populations, if appropriate, receiving program benefits and the percentage of eligible minorities or females, if appropriate, in the eligible population.

(2) The relative disparities between the percentage of minorities and females in the relevant labor market and the percentage of minorities and females employed by the grantee;

(3) The number and nature of complaints filed against a grantee either with CSA or other Federal agencies;

(4) The scope of problems revealed as a result of an investigation of a compliant filed with CSA and other appropriate Federal, state and local civil rights agencies; and

(5) The amount of assistance provided to a grantee.

(d) Within 15 days of the selection of a grantee for review, the grantee shall be notified that it has been selected for a compliance review and the review shall be initiated.

(e) The grantee shall be informed that it may at any time prior to CSA's findings make a documentary submission responding to, rebutting, or denying allegations raised in the course of the compliance review.

(f) Within 180 days for the initiation of a compliance review, the Associate Director for Human Rights or his/her



designee shall notify the grantee in writing of:

(1) Preliminary findings;

(2) Recommendations for achieving voluntary compliance, where appropriate; and

(3) The opportunity to engage in voluntary compliance negotiations, where appropriate.

The Associate Director for Human Rights or his/her designee shall notify the Assistant Attorney General for Civil Rights at the same time he/she notifies the grantee of any matter where recommendations for achieving voluntary compliance are made.

(g) If within 50 days of CSA's recommendations for achieving voluntary compliance the recommendations have not been agreed to, or voluntary compliance has not been secured, or the preliminary findings have not been shown to be false the Associate Director for Human Rights shall make a formal written determination of non-compliance. At the same time the grantee is notified of this determination, it shall be forwarded to the Assistant Attorney General for Civil Rights. This determination shall be made no later than 14 days after the conclusion of the 50-day negotiation period.

(h) Where the Associate Director for Human Rights makes a formal determination of noncompliance, the grantee and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the grantee has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Associate Director shall institute proceedings under Subpart E.

(i) All agreements to come into voluntary compliance shall be in writing, shall set forth the specific steps the grantee has agreed to take, and shall be signed by the Associate Director for Human Rights or his/her designee and an official of the grantee with authority to legally bind the grantee.

#### § 1010.30-3 Complaint investigations.

(a) *Local Complaint Procedures.* (1) *Submission of an Equal Opportunity Complaint.* Any person who believes he/she has encountered discrimina-

tion because of race, color, creed, sex, national origin, age, political affiliation, beliefs or handicap may first file a complaint with the Equal Opportunity Officer (EOO) of the grantee not more than 180 calendar days after the act complained of occurred. A copy of the complaint shall be immediately mailed to the Associate Director for Human Rights or his/her designee by the Equal Opportunity Officer.

(2) *Resolution and Decision by the Grantee.* (i) The EOO shall make every effort to resolve the complaint informally. The EOO shall, if requested by the complainant, assist in discussions with any party to the complaint and may take other steps which may assist in the resolution of the complaint.

(ii) The aggrieved person has the right to be accompanied, represented and advised by a representative or attorney of his/her choice. If the aggrieved person or the representative is an employee of the agency, he/she shall be given a reasonable amount of working time to prepare and present his/her request for a resolution of the complaint. These procedures shall be included in the grantee's personnel policies and must be approved by the CSA Office of Human Rights.

(iii) The EOO shall have 21 days to attempt to resolve the complaint before CSA will begin processing the complaint, if it has been filed with CSA or CSA otherwise assumes jurisdiction.

(iv) The EOO shall be given access within the agency to any information necessary for resolving the complaint.

(v) The EOO shall inform the complainant of the right to file a formal complaint with CSA and any other appropriate Federal, state and local civil rights agencies.

(vi) Nothing in this subpart should be construed to mean that a complainant cannot file a complaint directly with CSA at any time.

(3) *Reports on Grantee Efforts at Resolution.* (i) When the EOO has completed attempts to resolve the complaint, a report shall be prepared, setting out a summary of the complaint, the preliminary inquiry and the disposition of the complaint, indicating the basis for that disposition.



(ii) Copies of the report shall be given to the grantee's board, the complainant and to the Office of Human Rights. A report shall be forwarded within 21 days of the filing of a complaint, regardless of the disposition of the complaint.

(b) *CSA Complaint Procedures.* (1) *Filing of Complaint with CSA.* (i) If the result of the procedures outlined in § 1010.30-3(a) is unsatisfactory to the complainant, a formal complaint may be filed within 10 calendar days of receipt of the report of the EEO.

(ii) A complainant may file a complaint directly with CSA. However no complaint will be investigated if not received by CSA or the local EEO within 180 days of the date of the alleged discrimination unless the time for filing is extended, for good cause, by the Associate Director for Human Rights or his/her designee. If a complaint is filed with the local EEO and CSA, CSA shall not begin processing the complaint until the 21 days set forth in § 1010.30-3(a)(2)(iii) have expired.

(2) Within 25 days of receipt of a complaint, the Associate Director for Human Rights or his/her designee shall:

(i) Ascertain whether CSA has jurisdiction over the complaint;

(ii) If it is determined that CSA has jurisdiction, notify the grantee involved of the complaint and initiate the investigation; and

(iii) If it is determined that CSA does not have jurisdiction, notify the complainant of that fact in writing.

(3) The grantee shall be notified that it may at any time prior to CSA's findings make a documentary submission responding to, rebutting, or denying allegations raised in the course of the complaint investigation.

(4) Within 180 days of the initiation of a complaint investigation, the Associate Director for Human Rights or his/her designee shall notify the grantee in writing of:

(i) the preliminary findings;

(ii) recommendations for achieving voluntary compliance, where appropriate; and

(iii) the opportunity to engage in voluntary compliance negotiations, where appropriate.

The Associate Director for Human Rights or his/her designee shall notify the Assistant Attorney General for Civil Rights at the same time he/she notifies the grantee of any matter where recommendations for achieving voluntary compliance are made.

(5) If within 50 days of CSA's recommendation for achieving voluntary compliance, the recommendations have not been agreed to, voluntary compliance has not been secured, or the preliminary findings have not been shown to be false the Associate Director for Human Rights shall make a formal written determination of non-compliance. At the same time the grantee is notified of this determination, it shall be forwarded to the Assistant Attorney General for Civil Rights. This determination shall be made no later than 14 days after the conclusion of the 50-day negotiation period.

(6) If the Associate Director for Human Rights makes a formal determination of noncompliance, the grantee and the Assistant Attorney General for Civil Rights shall be advised in writing that the determination has been made and the grantee has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been secured within the 10-day period, the Director shall institute proceedings under Subpart E.

(7) All agreements to come into voluntary compliance shall be in writing, shall set forth the specific steps the grantee has agreed to take, and shall be signed by the Associate Director for Human Rights and an official of the grantee with authority to legally bind the grantee.

#### § 1010.30-4 Back-pay award.

CSA grant funds may lawfully be used to cover back-pay awards resulting from judgments or settlements arising from complaints of discrimination. However, CSA reserves the right to determine whether to allow the program cost on a case-by-case basis after the expenditure of grant funds so as not to influence the decision of the grantee to settle. Consideration will be given to such factors as the grantee's

conduct subject to the claim of discrimination, and whether the complainant's salary is funded by CSA.

**§ 1010.30-5 Complaints filed with State and local commissions or the Equal Employment Opportunity Commission.**

When a complaint is filed with CSA and with the Equal Employment Opportunity Commission or another Federal, state or local agency, the Associate Director for Human Rights or his/her designee shall communicate with the other agency and shall arrange to handle the complaint so as to avoid duplication and to secure an effective resolution of the complaint. It shall be the general practice of CSA to investigate a Title VI complaint, unless there appears to be a compelling reason to do otherwise. In cases where Title VI complaints are not investigated, the compelling reason shall be set forth in writing to the complainant and Assistant Attorney General for Civil Rights.

**§ 1010.30-6 Intimidation.**

No grantee shall intimidate, retaliate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 624 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c; Title VI of the Civil Rights Act of 1964, as amended, or this part, or because he/she has made a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any preliminary inquiries thereunder.

**§ 1010.30-7 Adjustment of time limits.**

The time limits listed in § 1010.30-3 (b)(2) through (b)(4) of this section shall be appropriately adjusted where CSA requests another Federal agency to act on the complaint. CSA will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, CSA shall institute appropriate actions as required by this subpart.

**Subpart E—Procedure for Effecting Compliance**

**§ 1010.40-1 General.**

(a) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any applicable law of the United States or any assurance or other contractual undertaking.

(b) Noncompliance with Subpart C. If an applicant fails or refuses to furnish an assurance required under Subpart C or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that subpart, Federal financial assistance may be refused in accordance with the procedures of this subpart.

(c) The Agency may defer action on applications for assistance to the grantee or applicant during the pendency of enforcement proceedings under this part.

**§ 1010.40-2 Termination of or refusal to grant or to continue financial assistance.**

(a) No order suspending, terminating or refusing to grant or continue Federal financial assistance for failure to comply with this part shall become effective until:

(1) The Associate Director for Human Rights or his/her designee has advised the applicant or grantee of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or grantee to comply with a requirement imposed by or pursuant to this subpart;

(3) The action has been reviewed by the Director of CSA pursuant to § 1010.40-4 or he/she has had the opportunity to review and did not do so; and

(4) The expiration of 30 days after the Director of CSA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or grantee as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been found.

(b) Voluntary compliance will be determined as not being available, if a voluntary compliance agreement is not arrived at during the period for voluntary compliance negotiations set forth by this part.

(c) Section 1010.40-2(a)(4) does not apply to actions concerning discrimination on the basis of creed, political affiliation or belief or to employment discrimination on the basis of race or national origin not covered by Title VI, § 1010.10-3(a), and § 1010.10-3(b).

#### § 1010.40-3 Hearings.

(a) *Opportunity for Hearing.* Whenever an opportunity for a hearing is required by this part, reasonable notice of such hearing shall be given by registered or certified mail, return receipt requested. This notice shall advise the applicant or grantee of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and either (1) fix a date less than 20 days after the date of such notice within which the applicant or grantee may request of the responsible CSA official that the matter be scheduled for hearing, or (2) advise the applicant or grantee that the matter in question has been set for hearing at a stated place and time. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or grantee may waive a hearing and

submit written information and argument for the record. The failure of an applicant or grantee to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of Title VI and this subpart and consent to the making of a decision on the basis of such information as is available.

(b) *Time and Place of Hearing.* Hearings shall be at a time and place in Washington, D.C. fixed by the responsible CSA official or his/her designee unless he/she determines for cause that another location should be selected. Hearings shall be held before a hearing officer who shall be referred to hereinafter as the hearing examiner.

(c) *Right to Counsel.* In all proceedings under this section, the applicant or grantee and CSA shall have the right to be represented by counsel.

(d) *Procedures, Evidence and Record.* (1) The hearing, decision, and any review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (Sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper, relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 1010.40-2 of this part, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both CSA and the applicant or grantee shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing examiner.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing examiner. The hearing examiner may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either



side of the issues. A transcript shall be made of the oral evidence unless dispensed with by stipulation. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI, the Director may, by agreement with such other departments or agencies, provide for consolidated or joint hearings, and for the application to such hearings of rules of procedure consistent with this part. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 1010.40-4.

**§ 1010.40-4 Decisions and notices.**

(a) *Initial Decision.* The hearing examiner shall make an initial decision. A copy of such initial decision shall be mailed to the applicant or grantee. The applicant or grantee may within 30 days of the mailing of the initial decision file with the Director of CSA its exceptions to the initial decision. In the absence of exceptions, the Director of CSA may, on his/her own motion, within 45 days after the initial decision, serve on the applicant or grantee a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review, the Director of CSA shall review the initial decision and issue his/her own decision thereon. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of CSA.

(b) *Final Decision.* Whenever the Director of CSA makes the initial decision pursuant to paragraph (c) of this section, or whenever the hearing examiner issues an initial decision, the applicant or grantee and complainant shall be given a copy of the decision. A copy of the final decision of the Director of CSA shall be given to the applicant or grantee and the complainant.

(c) *Waived Hearings.* Whenever a hearing is waived pursuant to Section 1010.40-3(a), a decision shall be made by the Director of CSA on the record

and a copy of such decision shall be given to the applicant or grantee and to the complainant.

(d) *Rulings Required.* The decision of a hearing examiner shall set forth each of his/her findings, conclusions, or exceptions presented, and shall identify the requirement or requirements imposed by or pursuant to this part, Title VI, or Section 624 of the Economic Opportunity Act of 1964, as amended, that the applicant or grantee has failed to comply with.

(e) *Content of Orders.* The final decision may provide for suspension or termination or, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purpose of Title VI and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or grantee determined to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Associate Director for Human Rights that it will fully comply with this part.

(f) *Post-Termination Proceedings.*

(1) An applicant or grantee adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or grantee adversely affected by an order issued pursuant to paragraph (e) of this section may at any time request the Associate Director for Human Rights to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or grantee has met the requirements of paragraph (f)(1) of this section. If the Associate Director for Human Rights determines that those requirements have been satisfied, he/she shall restore such eligibility.



(3) If the Associate Director for Human Rights denies any such request, the applicant or grantee may submit a written request for a hearing to the Director of CSA specifying why it believes such denial to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with such rules of procedure as are issued by the Director of CSA. The applicant or grantee will be restored to eligibility if it proves at a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

#### § 1010.40-5 Judicial review.

Any action taken pursuant to Title VI of the Civil Rights Act of 1964 is subject to judicial review as provided in Section 603 of Title VI.

### Supart F—Miscellaneous

#### § 1010.50-1 Role of CSA officials.

CSA shall to the fullest extent practicable in accordance with the requirements of this part seek the cooperation of grantees in obtaining compliance with this part, and shall provide assistance and guidance to grantees to help them comply voluntarily with this part.

#### § 1010.50-2 Continuing State programs.

(a) Each state agency administering a continuing program which receives Federal assistance from CSA shall establish a Title VI compliance program for itself and other grantees which obtain financial assistance through it.

(b) This program will parallel the provisions of this part, including the maintenance of records necessary to permit Federal officials to determine compliance of the state agency and the sub-grantees with Title VI and this part.

#### § 1010.50-3 Effect on other regulations, forms, and instructions.

Nothing in this part shall be deemed to supersede (a) Executive Order 11246 and regulations issued thereun-

der, or (b) any other regulations or instructions insofar as they prohibit discrimination on the grounds of race, color, national origin or sex in any program or situation to which this part is applicable, or prohibit discrimination on any other ground.

#### § 1010.50-4 Supervision and coordination.

The Director of CSA may assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of this part other than the right to review a hearing examiner's initial decision as provided in § 1010.40-4. Any action taken, determination made, or requirements imposed by an official of another department or agency acting pursuant to such an assignment or responsibility shall have the same effect as though such action had been taken by the responsible official of CSA.

### APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES FUNDING AUTHORITIES UNDER THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED

| EOA section      | 42 U.S.C. section | Federal financial assistance                        |
|------------------|-------------------|-----------------------------------------------------|
| 101 .....        | 2712              | Research, Demonstration & Pilot Projects.           |
| 221 .....        | 2808              | Community Action.                                   |
| 222(a)(5) .....  | 2809              | Community Food and Nutrition.                       |
| 222(a)(7) .....  | 2809              | Senior Opportunities and Services.                  |
| 222(a)(11) ..... | 2809              | Rural Housing Development and Rehabilitation.       |
| 222(a)(12) ..... | 2809              | Emergency Energy Conservation Services.             |
| 222(a)(13) ..... | 2809              | Summer Youth Recreation.                            |
| 226 .....        | 2813              | Design and Planning Assistance Programs.            |
| 227 .....        | 2814              | National Youth Sports Programs.                     |
| 228 .....        | 2815              | Consumer Action and Cooperative Programs.           |
| 230 .....        | 2823              | Technical Assistance and Training.                  |
| 231 .....        | 2824              | State Agency Assistance.                            |
| 232 .....        | 2825              | Research and Pilot Programs.                        |
| 234 .....        | 2827              | Special Assistance.                                 |
| 235 .....        | 2828              | Demonstration Community Partnerships.               |
| 302(a) .....     | 2851              | Loans to Low Income Families (Rural Loan Programs). |

| EOA section | 42<br>U.S.C.<br>section | Federal financial assistance                                                           |
|-------------|-------------------------|----------------------------------------------------------------------------------------|
| 312.....    | 2862                    | Assistance for Migrant, and Other Seasonally Employed, Farmworkers and their Families. |
| 712.....    | 2982a                   | Community Development Corp.                                                            |
| 247(b)..... | 2985e                   | Research and Planning (Community Economic Development).                                |
| 901(a)..... | 2995                    | Program and Project Evaluation.                                                        |

**APPENDIX B—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT**

**Inner-City Youth Employment Program**

**APPENDIX C—APPLICATION OF PART 1010 TO FEDERAL FINANCIAL ASSISTANCE OF COMMUNITY SERVICES ADMINISTRATION**

**Nondiscrimination in Federally Assisted Programs**

**(A) Examples:**

The following examples, without being exhaustive, illustrate the application of the non-discrimination provisions of this part in programs or projects receiving Federal financial assistance from the Community Services Administration.

1. Denial of the opportunity to participate in a program because of race, color or national origin.—An Off-reservation Native American funded program in an urban area denies a Caucasian the opportunity to participate in the food and nutrition component of the program because she/he is not a Native American.

2. Failure to ensure that all segments of the low-income community have an equal opportunity to participate in the board member representation elective process because of race, color, or national origin.—A Community Action Agency in a multiracial community utilizing a mobile voting booth for board member elections in the area served, allots an equal amount of time in each of the ethnic and racial areas except for the Black community.

3. Providing a disproportionate allocation to one sector of a community with a predominant monoracial composition where the disproportionate allocation is not justified by a CSA-approved program objective.—A Community Action Agency serving a poverty population composed of 10% White, 77% Black, 10% Hispanic and 3% Oriental provides the White poverty com-

munity with 50% and the Black poverty community with 20% of the funds available to the poverty area served.

The above disproportionate allocations may be justifiable if the CSA-approved program objective was to address unemployment, and if 90% of the White poverty area was unemployed compared to 5% of the Black poverty area.

4. The utilization of sites and facilities that have historically discriminated, which affects the participation of beneficiares because of race, color, or national origin.—A Community Action Agency in a multiracial community which is predominately Black leases a facility for use as a neighborhood service center in an exclusive White area that is inaccessible to the Black community.

**PART 1050—UNIFORM FEDERAL STANDARDS**

**Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800-1)**

**Sec.**

- 1050.1 Applicability.
- 1050.2 Purpose.
- 1050.3 Exceptions to the Uniform Federal Standards.
- 1050.4 Definitions of terms as used in this part.
- 1050.5 Implementing schema.

**Subpart B—Cash Depositories (CSA Instruction 6800-2)**

- 1050.10 Physical segregation and eligibility.
- 1050.11 Letter-of-credit—checks paid basis.
- 1050.12 FDIC insurance coverage.
- 1050.13 Minority-owned banks.

**Subpart C—Bonding and Insurance (CSA Instruction 6800-3)**

- 1050.15 References.
- 1050.16 Standard.
- 1050.17 CSA implementing policies and procedures.

**Subpart D—Retention and Custodial Requirements for Records (CSA Instruction 6800-4)**

- 1050.20 References.
- 1050.21 Documents affected.
- 1050.22 Length of retention period.
- 1050.23 Starting date of retention period.
- 1050.24 Substitution of Microfilm.
- 1050.25 Access to records.
- 1050.26 Restrictions on public access.
- 1050.27 CSA implementing policies and procedures.

## Part 1050

### Subpart E—Program Income (CSA Instruction 6800-5)

#### Sec.

- 1050.40 References.
- 1050.41 Definition of program income.
- 1050.42 Standard.
- 1050.43 CSA implementing policies and procedures.

### Subpart F—Cost Sharing and Matching (CSA Instruction 6800-6)

- 1050.50 References.
- 1050.51 Definitions.
- 1050.52 Standards.
- 1050.53 Qualifications.
- 1050.54 Valuation of grantee in-kind contributions.
- 1050.55 Valuation of third-party in-kind contributions.
- 1050.56 Supporting records for in-kind contributions from non-Federal third parties.
- 1050.57 CSA implementing policies and procedures.

### Subpart G—Standards for Financial Management Systems (CSA Instruction 6800-7)

- 1050.60 References.
- 1050.61 Standards.
- 1050.62 CSA implementing policies and procedures.

### Subpart H—Financial Reporting Requirements (CSA Instruction 6800-8)

- 1050.70 References.
- 1050.71 Definitions.
- 1050.72 Standard.
- 1050.73 CSA implementing policies and procedures.

### Subpart I—Monitoring and Reporting Performance (CSA Instruction 6800-9)

- 1050.80-1 Applicability.
- 1050.80-2 Standard.
- 1050.80-3 CSA implementing policies and procedures.

ATTACHMENT A  
ATTACHMENT B

### Subpart J—Payment Requirements (CSA Instruction 6800-10)

- 1050.90 References.
- 1050.91 Definitions.
- 1050.92 Standard.
- 1050.93 CSA implementing policies and procedures.

## Title 45—Public Welfare

### Subpart K—Revision of Financial Plans [Reserved]

### Subpart L—Grant Closeout Procedures (CSA Instruction 6800-12)

#### Sec.

- 1050.110 References.
- 1050.111 Definitions.
- 1050.112 Standards.
- 1050.113 CSA implementing policies and procedures.

### Subpart M—Suspension and Termination Procedures (CSA Instruction 6800-13)

- 1050.115-1 References.
- 1050.115-2 Definitions.
- 1050.115-3 Failure to comply with grant terms and conditions.
- 1050.115-4 Suspension.
- 1050.115-5 Termination for cause.
- 1050.115-6 Termination for convenience.
- 1050.115-7 CSA implementing policies and procedures governing suspensions.
- 1050.115-8 CSA implementing policies and procedures governing termination of assistance.

### Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (CSA Instruction 6800-14)

- 1050.120 References.
- 1050.121 Standards.
- 1050.122 CSA implementing policies and procedures.

### Subpart O—Property Management Standards

- 1050.130-1 Applicability.
- 1050.130-2 References.
- 1050.130-3 Purpose.
- 1050.130-4 Definitions.
- 1050.130-5 Standard—Real property.
- 1050.130-6 Standard—Federally owned. Nonexpendable personal property.
- 1050.130-7 Standard—Exempt property.
- 1050.130-8 Standard—Other nonexpendable property.
- 1050.130-9 Standard—Expendable personal property.
- 1050.130-10 Standard—Intangible property.
- 1050.130-11 Property acquisition.

### Subpart P—Procurement Standards

- 1050.160-1 Applicability.
- 1050.160-2 References.
- 1050.160-3 Definition.
- 1050.160-4 Purpose.
- 1050.160-5 General responsibilities and procedures.
- 1050.160-6 Standard—Code of conduct.
- 1050.160-7 Standard—Open competition.



Sec.

1050.160-8 Standard—Procedure.

1050.160-9 Method of procurement for state and local governments.

1050.160-10 Standard—Contract provisions.

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 42 FR 18034, Apr. 4, 1977, unless otherwise noted.

**Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800-1)**

**§ 1050.1 Applicability.**

45 CFR 1050 is applicable to all grants and other agreements made under the Economic Opportunity Act of 1964, as amended, to public and private organizations/agencies, including those serving as delegate agencies, when the assistance is administered by the Community Services Administration.

**§ 1050.2 Purpose.**

The purpose of Part 1050 is to set forth the Uniform Federal Standards pursuant to OMB Circular A-110 and FMC 74-7 (A-102) and to provide grantees with CSA's policies and procedures implementing those standards the goal of which is to obtain consistency and uniformity among Federal agencies in the administration of grants to, and other agreements with, units of local and State Government, public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations.

**§ 1050.3 Exceptions to the Uniform Federal Standards.**

(a) *For classes of grantees.* Neither CSA nor any other Federal agency can apply more restrictive or differing requirements on a class of grantees unless (1) a statute expressly prescribes policies or specific requirements that differ from the standards or (2) the agency has received approval from the Office of Management and Budget.

(b) *For certain grantees.* CSA may impose additional requirements on individual grantees if the grantee has a

history of poor performance, is not financially stable, or its management system does not meet the standards set forth in Part 1050. In those instances CSA must inform the grantee in writing as to (1) why the additional standards are being imposed and (2) what corrective action is needed. Copies of such notifications must be sent to OMB and other agencies funding the grantee at the same time the grantee is notified.

**§ 1050.4 Definitions of terms as used in this part.**

(a) The term "grant" means money or property provided in lieu of money paid or furnished by grantees under programs that provide financial assistance or that provide support or stimulation to accomplish a public purpose. The term "other agreements" does not include contracts which are required to be entered into and administered under procurement laws and regulations. Grants and other agreement exclude (1) technical assistance programs, which provide services instead of money, (2) assistance in the form of general revenue sharing, loans, loan guarantees, or insurance, and (3) direct payments of any kind to individuals.

(b) The term "grantee" is used by CSA in lieu of "recipient" and includes the following types of nonprofit organizations that are receiving Federal funds from a Federal agency or through a State or local government:

(1) Public and private institutions of higher education; public and private hospitals; and other quasi-public and private nonprofit organizations such as (but not limited to) community action agencies, research institutes, educational associations, and health centers. In addition, for purposes of this part, it includes private-for-profit organizations funded under Title VII of the EOA. The term does not include foreign or international organizations (such as agencies of the United Nations) and Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large scale programs that are Government-owned, or

are designed as federally-funded research and development centers.

(c) The term "delegate agency" is used by CSA in lieu of "subrecipient" and means a public or private agency, institution or organization or a State or other political jurisdiction to which the development, conduct and administration of all or part of a project assisted under the Economic Opportunity Act of 1964, as amended, has been delegated by a grantee or by another agency or organization which has received assistance by or through a grantee, but does not include individuals who ultimately receive benefits under any program or assistance.

**§ 1050.5 Implementing schema.**

(a) *Responsibilities.* OMB Circular A-110 and FMC 74-7 (Cir. A-102) require all Federal agencies administering programs that involve grants and other agreements with grantees to issue appropriate implementing regulations.

(b) *Publication formats.* As with all policy statements CSA is issuing its

implementing regulations both in the FEDERAL REGISTER and as part of the CSA directives system. However, a separate Part (1050) has been established in the Code of Federal Regulations within which all Uniform Federal Standards and accompanying CSA policies and procedures will be published. Also, in the CSA directives system the 6800 series will be used exclusively for promulgation of the standards. Each standard will be issued as a separate CSA Instruction within that series with accompanying CSA implementing policies and procedures (if required) to be issued as an Attachment to the appropriate Instruction. As a further means of more easily identifying the standards, CSA will deviate from its normal practice of using yellow stock to identify policy statements and will publish the standards on blue stock.

(c) *Cross Reference Index.* Following is an index which provides a cross reference to CSA implementing regulations:

| Attachments to—    |          | Title                                                  | Implementing regulations |               |
|--------------------|----------|--------------------------------------------------------|--------------------------|---------------|
| OMB circular A-110 | FMC 74-7 |                                                        | CSA instruction          | CFR reference |
| A                  | A        | Cash Depositories.....                                 | 6800-2                   | 1050.10       |
| B                  | B        | Bonding and Insurance.....                             | 6800-3                   | 1050.15       |
| C                  | C        | Retention and Custodial Requirements for Records.....  | 6800-4                   | 1050.20       |
| D                  | E        | Program Income.....                                    | 6800-5                   | 1050.40       |
| E                  | F        | Cost Sharing and Matching.....                         | 6800-6                   | 1050.50       |
| F                  | G        | Standards for Financial Management Systems.....        | 6800-7                   | 1050.60       |
| G                  | H        | Financial Reporting Requirements.....                  | 6800-8                   | 1050.70       |
| H                  | I        | Monitoring and Reporting Program Performance.....      | 6800-9                   | 1050.80       |
| I                  | J        | Payment Requirements.....                              | 6800-10                  | 1050.90       |
| J                  | K        | Revision of Financial Plans.....                       | 6800-11                  | 1050.100      |
| K                  | L        | Closeout Procedures.....                               | 6800-12                  | 1050.110      |
| L                  | L        | Suspension and Termination Procedures.....             | 6800-13                  | 1050.115      |
| M                  | M        | Standard Form for Applying for Federal Assistance..... | 6800-14                  | 1050.120      |
| N                  | N        | Property Management Standards.....                     | 6800-15                  | 1050.130      |
| O                  | O        | Procurement Standards.....                             | 6800-16                  | 1050.160      |

**Subpart B—Cash Depositories (CSA Instruction 6800-2)**

**§ 1050.10 Physical segregation and eligibility.**

Except for situations described in §§ 1050.11, 1050.12 and 1050.13 the Community Services Administration does not:

(a) Require physical segregation of cash depositories for CSA funds which are provided to a grantee.

(b) Establish any eligibility requirements for cash depositories for CSA funds which are provided to a grantee.

**§ 1050.11 Letter-of-credit—checks paid basis.**

A separate bank account is required when applicable letter-of-credit agree-

ments provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.

#### § 1050.12 FDIC insurance coverage.

Any monies advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees' (public monies as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

#### § 1050.13 Minority-owned banks.

Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and delegate agencies are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

### Subpart C—Bonding and Insurance (CSA Instruction 6800-3)

#### § 1050.15 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment B).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment B).

(3) CSA Instruction 6710-6, Applying for a grant under Title VII of the Community Services Act.

(4) CSA Instruction 6710-8, Preparing a Budget for a Title VII grant under the Community Services Act.

(5) CSA Instruction 6143-1a, Emergency Energy Conservation Program (45 CFR 1061.30).

#### § 1050.16 Standard.

(a) In administering CSA grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. CSA will not impose additional bonding and insurance requirements including fidelity bonds, except as provided in paragraphs (b) through (d) of this section.

(b) *Construction and facility improvement.* The recipient of a CSA grant which requires contracting or facility improvement (including any

CSA grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding \$100,000. For contracts exceeding \$100,000, CSA may determine that the grantee's bonding provisions adequately protect the Federal Government's interest; otherwise the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Loan guarantees.* Where in connection with a CSA grant, CSA also guarantees the payment of money borrowed by the grantee, CSA may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interests of the Federal Government.

(d) *Fidelity bonds.* If the grantee is a nongovernmental organization, CSA requires adequate fidelity bond coverage.

(e) *Source of bonds.* Any bonds obtained pursuant to (b)(1) through (3), (c) or (d) of this section shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).



§ 1050.17 CSA implementing policies and procedures.

(a) *Policy.* OMB Circular A-110 permits Federal agencies to require fidelity bond coverage of its nongovernmental grantees if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government. Therefore, CSA will require evidence of appropriate bonding or assurance that arrangements have been made to obtain such coverage in line with the following policies and procedures.

(1) *Bond coverage of officials—(i) Assurance of fidelity bond coverage.* (A) Prior to the release of funds to any nongovernmental grantee for the first initial grant CSA must receive written assurance that the grantee has or has made arrangements for appropriate bonding of grantee officials. This assurance will take the form of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond that has been obtained.

(ii) *Coverage.* In all other situations, nongovernmental grantees must either have secured or must take steps to secure fidelity bond coverage in line with the following guides:

(A) Coverage should be secured in the aggregate amount of \$25,000 for persons authorized to sign or countersign checks or to disburse sizeable amounts of cash (such as for payrolls). Persons who handle only petty cash need not be bonded. Nor is it necessary to bond officials who are authorized to sign Payment Vouchers, but who are not authorized to sign or countersign checks or to disburse cash.

(B) Grantees normally should obtain a 3 year bond, payable annually, with an option to cancel in the event the program terminates before three years. Such terms are available from most surety companies.

(iii) *Responsibility vis-a-vis delegate agencies.* Grantees—both public and private—are responsible for assuring that appropriate officials of nongovernmental delegate agencies are bonded. Coverage for officials of delegate agencies which are private organizations shall be equal to the average of

funds to be expended each month (up to an aggregate amount of \$25,000.) If a delegate agency will expend less than \$1,000 per month in program funds, on the average, bond coverage is not required.

(b) *Procedures.* Copies of bonds secured by the grantee and by delegate agencies should be filed by the grantee and need not be submitted to CSA.

(c) *Affect of this Subpart on other CSA Policies and Procedures.* (1) OEO Instruction 7570-1, pp. 17 and 18, item 11. (3) Bonding: The three paragraphs are superseded and the sentence "See Instruction 6800-3 regarding applicability of bonding requirements and procedures." should be inserted.

(2) OEO Instruction 7570-2, p. 7, item 8.b: The period at the end of the sentence is deleted and the sentence "(See CSA Instruction 6800-3 regarding applicability of bonding requirements and procedures.)" should be inserted.

**Subpart D—Retention and Custodial Requirements for Records (CSA Instruction 6800-4)**

§ 1050.20 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment C).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment C).

(3) CSA Instruction 6800-5, Program Income (Uniform Federal Standard) (45 CFR 1050.40).

(4) CSA Instruction 6800-15, Property Management Standards (Uniform Federal Standard) (45 CFR 1050.130).

(5) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing.

(6) OEO Instruction 6810-1, Grantee Compliance with IRS Requirements for Withheld Federal Income and Social Security Taxes.

(7) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII of the EOA of 1964 as amended (45 CFR 1067.5).

§ 1050.21 Documents affected.

Financial records, supporting documents, statistical records, and all other records pertinent to a grant are cov-

ered by the requirements in this subpart.

#### § 1050.22 Length of retention period.

Except as provided in paragraphs (a) and (b) of this section and reference (6) (employer's tax records), records shall be retained for three years.

(a) If any litigation, claim or audit by or on behalf of the Federal Government involving the records has not been fully resolved before the expiration of the three-year period, the records shall be retained until resolution or until the end of the regular three-year period, whichever is later. In no case, however, will CSA require retention of records relating to any grant with respect to which actions by the United States to recover for diversion of money paid under the grant are barred by the statute of limitations in 28 U.S.C. 2415(b). That statute bars legal actions unless filed within six years after the right of action accrues. The six years excludes any periods in which the circumstances listed in 28 U.S.C. 2416 apply, e.g., material facts cannot be known, or a state of war exists.

(b) In order to avoid duplicate record-keeping, CSA may make special arrangements with grantees to retain any records which are continuously needed for joint use. CSA will request transfer of records to its custody from grantees when it determines that the records possess long-term retention value. When the records are transferred to or maintained by CSA, the three-year retention requirement is not applicable to the grantee.

#### § 1050.23 Starting date of retention period.

(a) *General.* Except for records covered by paragraphs (a) (1) and (2) of this section, where CSA grant support is continued or renewed on an annual basis, the retention period for each year's records starts from the date of submission to CSA of the grantee's annual or last financial report for that year; in all other cases the retention period starts from the date of submission to CSA of the grantee's final financial report.

(1) *Records for non-expendable property.* The retention period for records for non-expendable property required

by reference (4) starts from the date of disposition of the property. However, for property that has been replaced pursuant to reference (4), the retention period starts from the disposition of the replacement property.

(2) *Records pertaining to certain classes of income.* For records that relate to classes of program income subject to reference (3), the three-year retention period starts from the date the income is earned.

#### § 1050.24 Substitution of Microfilm.

Microfilm copies may be substituted for the original records.

#### § 1050.25 Access to records.

(a) CSA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to a specific CSA grant, in order to make audits, examinations, excerpts and transcripts.

(b) In case of a delegation under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the ultimate delegate agency which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

(c) In the case of a contract (or sub-contract) under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency, contractor, or sub-contractor, or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the contractor or sub-contractor which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

§ 1050.26 Restrictions on public access.

(a) *Private Grantees.* Unless otherwise required by law, CSA will not place restrictions on grantees which will limit public access to records covered by this subpart except when CSA has determined that the records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act if the records had belonged to CSA.

(b) *Public Grantees.* Unless otherwise required by law, CSA will not place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential. Following are some of the reasons for withholding records:

- (1) Prevent a clearly unwarranted invasion of personal privacy.
- (2) Specifically required by statute or Executive Order to be kept secret.
- (3) Commercial or financial information obtained from a person or a firm on a privileged or confidential basis.

§ 1050.27 CSA implementing policies and procedures.

(a) Changes to Existing CSA Policy Statements.

(1) Following are changes to be made to OEO Instruction 6801-1, page 10, item 6, second sentence: Everything appearing after the word "retained" is deleted and the following inserted:

\*\*\* for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800-4.)

(2) Following are changes to be made to CSA Instruction 7050-1, page 4, item 12, line 9: Everything appearing after the word "retained" is deleted and the following added:

\*\*\* for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800-4.)

Subpart E—Program Income (CSA Instruction 6800-5)

§ 1050.40 References.

- (1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. (Attachment D.)
- (2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Att. E).
- (3) CSA Instruction 6158-3, Small Business Programs Funded by CDCs (45 CFR 1076.20).
- (4) CSA Instruction 6800-8, Financial Reporting Requirements (45 CFR 1050.70).
- (5) CSA Instruction 6800-15, Property Management Standards (45 CFR 1050.130).
- (6) OEO Guidance 6801-1, Grantee Financial Control Techniques.
- (7) GSA Instruction 7050-1, General Conditions Governing CSA. Grants Under Titles II, III-B, and VII of the EOA of 1964 as amended (45 CFR § 1067.5).

§ 1050.41 Definition of program income.

Program income represents gross income earned by the grantee from CSA funded activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

§ 1050.42 Standard.

(a) *Interest.* Interest earned on advances of Title II funds shall be remitted to the Community Services Administration except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577).

(b) *Program Income*—(1) *Sale of Real and Personal Property.* Proceeds from the sale of real and personal property either provided by CSA or purchased in whole or in part with CSA funds shall be handled in accordance with § 1050.130 (CSA Instruction 6800-15).

(2) *Royalties earned from copyrights or patents.* (i) Unless the grant provides otherwise, grantees shall have no obligation to the Community Services Administration with respect to royalties as a result of copyrights or patents produced under the grant. (See references (5) and (7).)



(ii) However, in the case of public grantees, if after termination or completion of the grant, there is an excess of royalties of \$200 or more earned annually by the Federal share these sums shall be returned to CSA in the absence of other specific agreements between CSA and the grantee.

(3) *Other program income.* All other program income earned during the project period shall be retained by the grantee and, in accordance with the grant, shall be:

(i) Added to funds committed to the project by the Community Services Administration and the grantee and be used to further eligible program objectives; or

(ii) Deducted from the total project cost in determining the net cost on which the Federal share of costs will be based.

#### § 1050.43 CSA implementing policies and procedures.

(a) *Policy*—(1) *Service fees.* Under limited circumstances CSA may approve the charging of a fee to grantees of services supported with CSA funds. Such approval, however, does not allow the grantee to use Federal funds to produce income for the benefit of the grantee.

(b) *Procedures*—(1) *Return of interest.* Interest earned on the investment of CSA funds will be reported on SF-272, item 13.a (see reference (4)) and a check payable to the Treasurer of the United States for the earned interest should be attached to the report and sent to the CSA office responsible for administering the grant.

(2) *Return of royalties.* Public grantees who have royalty fees which must be returned to CSA (see § 1050.42(b)(2)) shall do so by forwarding a check, payable to the Treasurer of the United States, to the CSA office which had been responsible for administering the grant.

(3) *Other program income.* The CSA office responsible for administering the grant will also be responsible for determining the manner and grant period in which income retained by grantees is used within the constraints of the Standard outlined in § 1050.42(b)(3).

(4) *Reporting program income.* Program income will be reported on SF 269, Financial Status Report and on SF 272, Federal Cash Transactions. (See reference (4).)

### Subpart F—Cost Sharing and Matching (CSA Instruction 6800-6)

#### § 1050.50 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment E).

(2) Federal Management Circular 74-7 (or OMB Circular A-102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment F).

(3) CSA Instruction 6802-3, Non-Federal Share Requirements for Title II, sections 221, 222(a) and 231 Programs (45 CFR § 1068.20).

(4) CSA Instruction 6802-4, Additional Communities Eligible for Waivers of Non-Federal Share Requirement (Puerto Rico, Trust Territories, the Virgin Islands, and Indian Tribes on Reservations (45 CFR § 1068.21).

(5) CSA Instruction 6802-5, Eligibility for Waiver of Increased Non-Federal Share Contribution (45 CFR 1068.22).

(6) OEO Instruction 7641, Waiver of Non-Federal Share of Program Costs for Certain Title I-D Programs.

#### § 1050.51 Definitions.

(a) *Project costs.* Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a grantee and the value of the in-kind contributions made by the grantee or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.

(b) *Cost sharing and matching.* In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.

(c) *Cash contributions.* Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by non-Federal third parties.

(d) *In-kind contributions.* In-kind contributions represent the value of non-cash contributions provided by the grantee and non-Federal third par-

ties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

§ 1050.52 Standards.

(a) *Costs and contributions acceptable.* (1) Cost sharing or matching may consist of: (i) Charges incurred by the grantee as project costs. (Not all charges require cash outlays by the grantee during the project period: Examples are depreciation and use charges for building and equipment.) (ii) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals, except as provided in (A) below:

(A) Generally, any funds provided for payment of salaries in excess of \$15,000 shall not be counted as a non-Federal share contribution toward a Title II grant per Section 244(2) of the Economic Opportunity Act of 1964 as amended. However, these funds may be counted as a non-Federal share donation in those cases " \* \* \* (particularly in large metropolitan areas) where, because of the need for specialized or professional skills or prevailing local salary levels, application of the \* \* \* restriction would greatly impair program effectiveness or otherwise be inconsistent with the purposes sought to be achieved."<sup>1</sup> Grantees who wish to request such an exception will submit data and written justification to the appropriate CSA Administering Office and the Administering Office's response shall be retained by the grantee for audit purposes.

(B) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and insti-

tutions, and private organizations and individuals.<sup>2</sup>

§ 1050.53 Qualifications.

(a) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing and matching when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government under another assistance agreement unless the agreement is authorized by Federal law to be used for cost sharing or matching, e.g., General Revenue Sharing; Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383;

(6) Are provided for in the approved budget when required by CSA; and

(7) Conform to other provisions of this subpart.

§ 1050.54 Valuation of grantee in-kind contributions.

Values for grantee in-kind contributions will be established in accordance with the applicable cost principles.

<sup>2</sup>This includes volunteer services of board members. However, to be counted these services must be other than those required of them in their capacities as board members. For example, time spent at board or committee meetings by a board member who is a doctor would not be acceptable but time spent by him/her working in a clinic would be accepted. This also allows volunteer services of staff to be counted as non-Federal share when such services are not required by the positions they hold. (Grantees are reminded that any work performed by staff members which is in line with the normal responsibilities of their positions and is in excess of the normal weekly working hours is covered by the CSA overtime regulations (see OEO Instruction 6900-01) and can not be considered as a non-Federal share contribution.)

<sup>1</sup>Section 244(2) of the EOA of 1964, as amended.

**§ 1050.55 Valuation of third-party in-kind contributions.**

(a) *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those paid for similar work in the grantee's organization or which those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(b) *Valuation of donated, expendable personal property.* Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(c) *Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.* (1) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:

(i) If the purpose of the grant or other agreement is to assist the grantee in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges for equipment and buildings may be made. The

full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the Community Services Administration has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(i) *Land and buildings.* The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

(ii) *Nonexpendable personal property.* The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(iii) *Use of space.* The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(iv) *Loaned equipment.* The value of loaned equipment shall not exceed its fair rental value.

**§ 1050.56 Supporting records for in-kind contribution from non-Federal third parties.**

(a) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees. (See § 1050.57.)

(b) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented. (See § 1050.57.)

**§ 1050.57 CSA implementing policies and procedures.**

(a) *CSA Legislative Non-Federal Share Requirements.* Sections 225(c), 235(b), and 714 of the Economic Opportunity Act of 1964 as amended require the contribution of non-Federal share by grantees funded under Sections 221, 222(a), 235, and 712 of that



Act. In addition the Director of the Community Services Administration may administratively require a non-Federal share contribution from grantees funded under other sections of the Act if the grants are administered by Community Services Administration. Policies and procedures implementing the legislative requirements of the Economic Opportunity Act will be found in references (3) through (6) of this subpart.

(b) *Accounting for the non-federal share.* (1) The Statement of CSA Grant, Form 314, shows the minimum percentage of total program expenditures which non-Federal funds must constitute in the grant period. The grantee is expected to maintain the rate of contribution of the non-Federal share so that throughout the grant period Federal funds will not be used to pay for a substantially larger percentage of project costs than the Federal funds shown on the Statement of CSA Grant constitute.

(2) It is important to note that the Federal share may never exceed either the dollar amount shown on the Statement of CSA Grant or the maximum percentage of the total program expenditures that this constitutes. The grantee must provide only sufficient non-Federal contributions so that the Federal share remains at or below the maximum percentage; however, the grantee may choose to provide additional non-Federal share, to insure a margin of safety, in the event that annual audits disallow some contributions.

(3) The non-Federal share may be provided in one program account for the entire grant or it may be spread among several program accounts. (See reference (3) to this subpart.)

(4) Non-Federal share contributions of cash shall be recorded as they occur. It is not necessary to maintain separate ledger accounts for the expenditures of grantee cash.

(5) All in-kind contributions, including those applicable to delegate agencies, must be recorded in the ledger accounts, either in separate accounts or in separate columns, as grant costs when the in-kind services or goods are performed or received. Records, including required supporting documen-

tation, on in-kind services or goods performed or received must be established and maintained on a current basis.

(6) The non-Federal share is subject to audit, as is the Federal share.

(c) *Required documentation—Volunteered services.* All volunteered services claimed as non-Federal share must be substantiated by time cards or records that are signed by both the volunteer and his supervisor as is required for all other employees. Such records must show the actual hours worked and the specific duties performed. They should also indicate the basis for determining the rate of volunteer's contribution and such documentation must be available for audit.

(d) Financial assistance of Title II of the Economic Opportunity Act of 1964, as amended, may be used to provide the required 10% matching share of the wages of students employed under the College Work Study Program (CWSP) who work in Community Action Programs.

[42 FR 18034, Apr. 4, 1977, as amended at 44 FR 56549, Oct. 1, 1979]

### Subpart G—Standards for Financial Management Systems (CSA Instruction 6800-7)

#### § 1050.60 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment F).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. (Attachment G.)

(3) OEO Instruction 6710-02, Instruction for Defining Cost Categories.

(4) CSA Instruction 6710-7, Amending a Grant Under Title VII of the Community Services Act.

(5) CSA Instruction 6710-8, Preparing a Budget for a Title VII Grant Under the Community Services Act.

(6) CSA Instruction 6800-6, Cost Sharing and Matching (Uniform Federal Standard). (45 CFR 1050-50.)

(7) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing, and Changes 1 and 2 to that Instruction.

(8) OEO Instruction 6803-1a, Allowances and Reimbursements for Members of Policy Making Bodies.

(9) OEO Instruction 6803-2, Allowability of Costs Incurred to Borrow Funds.

(10) OEO Instruction 6806-01, Establishing and Maintaining Program Accounts.

(11) OEO Instruction 6806-04, Accounting for Delegated or Contracted Activities.

(12) OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(13) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII of the EOA of 1964 as amended. (45 CFR 1067.5.)

(14) OEO Instruction 7570-1, Applying for a New Research or Demonstration Grant Under the Economic Opportunity Act.

(15) OEO Instruction 7570-2, Applying for Continuation of a Research or Demonstration Grant Under the Economic Opportunity Act.

#### § 1050.61 Standards.

(a) Following are the standards for financial management systems for grantees. (References (3) through (15) contain CSA's detailed implementing policies and procedures.) CSA will impose no additional standards on grantees unless they are specifically provided for in applicable statutes. Grantees' financial management systems will provide for the following: (1) Accurate, current and complete disclosure of each CSA sponsored project or program in accordance with the financial reporting requirements set forth in § 1050.70 (CSA Instruction 6800-8).

(2) Records that identify adequately the source and application of funds for CSA sponsored projects. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.

(3) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant or other agreement. Financial information should be related to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the

grantee shall make drawdowns as close as possible to the time of making disbursement.

[See § 1050.90 (Instructions 6800-10) for letter-of-credit procedures.]

(6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.

(7) Accounting records that are supported by source documentation.

(8) Examinations in the form of audits or internal audits.<sup>1</sup> Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems, and internal procedures that have been established to meet the terms and conditions of the agreements.

It is not intended that each agreement awarded to the grantee be examined. Generally examinations should be conducted on an organization wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of Federal grants and other agreements. Such tests will include an appropriate sampling of Federal agreements.<sup>2</sup> Examination will be conducted with reasonable frequency on a continuing basis or at scheduled intervals but at least annually in accordance with ref-

<sup>1</sup>Applicable to private grantees only.

<sup>2</sup> Because Section 243 of the Economic Opportunity Act of 1964, as amended, requires more frequent audits, i.e., at least annually, than that prescribed for grants funded by most other Federal agencies, the independent auditor may be requested by the grantee to examine CSA agreements only. In those cases, of course, the audit would limit his/her examination to CSA agreements and would include a sampling of CSA agreements only.

erence (7) and Section 243 of the Economic Opportunity Act of 1964 as amended.

(9) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audits annually in accordance with reference (7) and section 243 of the Economic Opportunity Act of 1964 as amended.<sup>3</sup>

(10) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Delegate agencies.* Grantees shall require delegate agencies to adopt the standards in § 1050.61(a) except for the requirement in (5), regarding the use of the letter-of-credit method and that part of (1) regarding reporting forms and frequencies prescribed in § 1050.70 (CSA Instruction 6800-8).

**§ 1050.62 CSA implementing policies and procedures.**

(See references (3) through (15) of this subpart for CSA's implementing policies and procedures as they relate to the standards set forth in this subpart.)

**Subpart H—Financial Reporting Requirements (CSA Instruction 6800-8)**

**§ 1050.70 References.**

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment G).

(2) FMC 74-7, (or OMB Circular A-102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment H).

(3) OEO Instruction 6807-1, Limitation on CAA Administrative Reports.

**§ 1050.71 Definitions.**

(a) *Accrued expenditures.* Charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, delegate agencies, and other payees; and (3) amounts becoming owed by the grantee under programs for which no cur-

rent services or performance are required by the grantee.

(b) *Accrued income.* The earnings during a given period which is a source of funds resulting from (1) services performed by the grantee, (2) goods and other tangible property delivered to purchasers, and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

(c) *Disbursements.* Payments in cash or check.

(d) *Federal funds authorized.* Represents the total amount of the Federal funds (in this case CSA funds) authorized for obligations as established in the grant document. This amount shall include any authorized carryover or unobligated funds from prior fiscal or program year.

(e) *In-Kind contributions.* Represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant program. When authorized by Federal legislation property purchased with Federal funds may be considered as grantee's in-kind contribution.

(f) *Obligations.* The amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

(g) *Outlays.* Represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

(h) *Program income.* Represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from services fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

(i) *Unobligated balance.* The portion of the funds authorized by CSA which has not been obligated by the grantee

<sup>3</sup>Applicable to public grantees only.



and is determined by deducting the cumulative obligations from the funds authorized.

(j) *Unliquidated obligations.* Represent the amount of obligations incurred by the grantee which have not been paid.

(k) *Program year.* A grantee's 12-month accounting period. For Community Action Agencies this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA, this is their usual 12-month accounting period which may or may not correspond with funding period of their grant(s) from CSA.

(l) *Funding period.* A program account funding period extends from the effective date of a new or refunding action through the termination date, or expiration of the planned number of months for which funds are provided.

#### § 1050.72 Standard.

(a) CSA will continue to utilize either the Letter of Credit or the predetermined monthly check issue as the two methods for making funds available to all construction and non-construction projects or programs. For the purpose of determining the status of those funds and to insure sound cash management on the part of grantees and delegate agencies CSA requires the submission of the following quarterly reports:

(i) *Reports required.* (i) Financial Status Report, SF 269 (for nonconstruction projects or programs).

(ii) Federal Cash Transactions Report, SF 272 (and 272A—Continuation Sheet, if necessary).

(iii) Outlay Report and Request for Reimbursement for Construction Programs, SF 271 (for construction programs only).

(2) *Preparation of reports.* Reports may be prepared on either a cash or an accrual basis with the appropriate indication on the report as to the method utilized. In the event that CSA should require all reports to be submitted on an accrual basis grantees will not be required to convert their accounting system, but shall develop such accrual information through esti-

mates based on an analysis of documentation on hand.

(3) *Submission.* Reports are required within 15 working days after the end of each quarter of the grantees program year with a final report due within 90 days after the completion or termination of the grant. Extensions to reporting dates may be approved upon request of the grantee. CSA may require monthly reports from grantees with awards of \$1 million or more annually.

(b) *SF 272, report of Federal cash transactions.* (1) CSA will use this report to monitor cash advanced to grantees and to obtain disbursement information for each agreement from the grantees. (2) CSA requires that grantees indicate in the "remarks" section of the SF 272 report the reason(s) for having and the need for retaining a cash balance of Federal funds in excess of current operating needs. For grantees on Letter of Credit current needs will relate to the amount of time required to fully effect a draw down in order to meet daily disbursement requirements. For grantees on monthly check issue current cash needs will mean a cash balance no greater than is necessary to meet operating requirements.

(c) *Additional reporting requirements.* When CSA needs additional information or more frequent reports in order to comply with legislative requirements or to monitor a grantee that has failed to meet the Standard for Financial Management as defined in CSA Instruction 6800-7, CSA will, prior to making any such request, adhere to the requirements imposed by OMB Circular No. A-40.

(d) CSA has the option of shading out any line item on any report that is unnecessary for decision-making purposes.

(e) CSA will accept the identical information from grantees in machine usable format or computer printouts in lieu of prescribed formats.

(f) CSA may provide computer outputs to grantee when it will expedite or contribute to the accuracy of reporting.

(g) CSA is authorized to reproduce these forms.

§ 1050.73 CSA implementing policies and procedures.

(a) *Policy.* (1) If any CSA regulation prescribes policies or requirements that differ from the provisions provided herein, the provisions of this subpart shall govern.

(2) All references to CSA Forms 315 and 315a in other documents will be deemed to mean SF-272 and the SF-269. CSA Forms 315 and 315a will be obsolete after April 30, 1977.

(3) Quarterly financial reports which are due subsequent to April 30, 1977 will be reported on SF-269, Financial Status Report. The SF-272, Federal Transactions Report, will be submitted at the same time.

(b) *General instructions.* (1) These general instructions apply to the preparation of Standard Forms 269, 271, and 272. Detailed instructions for their preparation will be found on the forms themselves.

(i) *How many copies to prepare.* Grantees shall prepare sufficient copies of the reports for each program year to make the distribution as shown below.

(ii) *Where to send reports.* (A) Grantees whose grant is administered by a CSA Regional Office will send one copy to the appropriate Regional Office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street N.W., Washington, D.C. 20506.

(B) Grantees who have CSA grants administered by both a CSA Regional Office and a Headquarters Office(s) will send one copy to the appropriate Regional Office, one copy to each funding office in the CSA Headquarters, and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(C) Grants receiving funds solely from Headquarters program offices will submit one copy to each funding office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(iii) *When to report.* (A) Standard Forms 269, 272, (and SF 271 when required for Construction Programs) will be submitted quarterly based upon the

grantee's program year. The reports are to be submitted to the appropriate CSA Office 15 working days following the end of each quarter.

(B) Grantees are required to submit a final financial report for all programs with a fixed termination date within 90 days after the termination date. In those situations where the terminated program is the grantee's only CSA-funded program, a check (payable to CSA) for the amount of the unexpended funds should accompany the report.

(iv) *What to report.* CSA grants are to be charged only with those costs related to Community Services Administration sponsored programs.

(v) *Reporting delegate agency data.* When delays do not permit reporting in time to meet the CSA grantee reporting deadlines, expenditures of the delegate agencies should be estimated by the parent organization and incorporated into the grantee quarterly Financial Status Reports. However, these amounts should be identified by an asterisk to show that they include estimates. Adjustments should be made in subsequent quarterly financial reports by netting the effects of the adjustments made into the information reported for the current report quarter; it will not be necessary to amend previously submitted financial reports except in those instances where the error reported was in a final report for a terminated program.

(vi) *Amounts reported.* All amounts are to be rounded to the nearest dollar. Do not report cents.

(vii) *Delegate agency responsibilities.* Delegate agencies are required to provide their parent organizations with all data needed to prepare quarterly financial reports which will include cash balances and expenditures of the delegate agencies.

(2) *Other financial report requirements.* An administrative costs report is required annually. See OEO Instruction 6807-1 for detailed procedures for completing and submitting CSA Form 315d, Administrative Costs Report.

(3) *Availability of forms.* Supply of referenced forms are available upon written request to: CSA Publications and Distribution Center, 5458 3rd Street NE., Washington, D.C. 20001.

**Subpart I—Monitoring and Reporting Performance (CSA Instruction 6800-9)**

SOURCE: 42 FR 43843, Aug. 31, 1977, unless otherwise noted.

**§ 1050.80-1 Applicability.**

This subpart applies to all grants made to public and private organizations/agencies under Titles II and III-B of the Economic Opportunity Act of 1964, as amended when such assistance is administered by the Community Services Administration.

**§ 1050.80-2 Standard.**

(a) *Monitoring responsibilities (grantee).* (1) Grantees shall monitor their performance under grants and other agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each project, function, or activity of each agreement as set forth in the approved application or awarded document.

(2) Grantees shall submit a performance report for each agreement that briefly presents the following information for each project, function, or activity involved as prescribed by CSA.

(i) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(ii) Reasons why established goals were not met.

(iii) Other pertinent information including, where appropriate, analysis and explanation of cost overruns of high unit costs.

(3) (NOTE.—See CSA's implementing regulations (§ 1050.80-3) for further details.)

(b) *Submission of Performance Reports.* (1) The Uniform Federal Standards require, except as provided in paragraph (b)(1) (i), (ii), and (iii), of this section, that grantees shall submit performance reports to CSA covering the same reporting period as the Fi-

nancial Status Report. CSA will require that performance reports be submitted to cover the same period as the financial reports but with less frequency. (See § 1050.80-3 for frequency of reports and reporting dates.) CSA will also require a final performance report for grants with a fixed termination date. However, neither CSA nor any other Federal sponsoring agency may require reports more frequently than quarterly or less frequently than annually.

(2) CSA may waive the requirement that performance reports be submitted with the financial reports under the following circumstances:

(i) When the grantee is required to submit a performance report with a continuation or renewal application.

(ii) When CSA determines that on-site technical assistance and certified completion data will be sufficient to evaluate construction projects.

(iii) When CSA finds it necessary to get an annual progress report on a calendar basis although its usual submission requirements are based on the grantee's program year or other funding period.

(c) *Special reporting requirements (Grantee).* (1) Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the grantee shall inform the appropriate CSA administering office by letter as soon as the following types of conditions become known;

(i) Problems, delays or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(ii) Favorable development or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.

(2) If any performance review conducted by the grantee discloses the need for change in the budget esti-



mates in accordance with the criteria established in 1050.100 (CSA Inst. 6800-11) the grantee shall submit a request for budget revision.

(d) *On-Site Review (CSA)*. CSA will make site visits as frequently as practicable to:

(1) Review program accomplishments and management control systems; and

(2) Provide such technical assistance as may be needed.

§ 1050.80-3 CSA implementing policies and procedures.

(a) *Policy*. (1) CSA would like to see its grantees established as independent, self-reliant and viable institutions within their communities. At the same time it recognizes a need for strengthening the accountability of grantees both to their communities and to CSA as the funding agency.

(2) CSA believes that regular internal self-assessments of project progress conducted by or under the direction of the grantee board or governing officials are essential to the effective operation of community-based anti-poverty programming and requires that grantees report the results of such self-assessments to the appropriate CSA Administering Office. (See paragraph (c) of this section.)

(b) *What is a Project Progress Review?* (1) A Project Progress Review (PPR) is the last link in closing the circle which includes planning, grant application, and implementation. A Project Progress Review requires that a grantee look both to the past and to the future—to the past to the conditions which existed before applying for CSA funds, what the board said it was going to do in the application for funds in order to deal with those conditions, and what has been done; and to the future to determine how the information gathered in the Review and the conclusions reached can be used to revise the goals for the remainder of the Program Year if necessary and/or affect the work program for the coming Program Year(s).

(2) *Definition*. A Project Progress Review (PPR) is a process carried out by a grantee in order to determine:

(i) What has been accomplished in meeting the locally set goals as shown in the grantee's work program;

(ii) The extent to which the grantee is achieving the broad purposes of community action as set forth in the Economic Opportunity Act and, for CAAs, the "Mission of the Community Action Agency";

(iii) The extent to which the grantee is meeting the general and specific standards of effectiveness described in CSA Instruction 7850-1a; and

(iv) How efficiently grantee planning, project management and overall administration is carried out in addressing the problems of poverty.

(3) What a PPR System Should Contain. (i) The grantee Board of Directors or Governing Officials should assure that the grantee has developed a project review system that contains, at a minimum, the following:

(A) A clear statement of the roles of all participants in the Review process, i.e. the Board itself (or governing officials, where appropriate), the executive director, other grantee staff, policy advisory committee(s), target area residents, and the community-at-large;

(B) The assignment of responsibilities and allocation of resources for designing the Review, gathering the information and analyzing it, developing the final report(s), and deciding how the findings will be used in making decisions;

(C) An adequate system for routinely collecting data which can be useful in the Reviews;

(D) A description of how the findings and recommendations from the reviews will be used in making or planning changes to on-going or future projects and to improve the management of these projects and the agency as a whole; and

(E) A schedule for holding regular Project Progress Reviews and special reviews of issues and projects that are or have become a priority in the Community.

(ii) Board members should actively participate in each Project Progress Review. In addition, the poor must also be involved in all phases including the preparation and review of the

PPR reports. (See OEO Instruction 6005-1.)

(c) *How and when to submit reports*—(1) *Reporting Format.* (i) Grantees will prepare reports using CSA Form 440. (See Attachment A.) Each PPR report will provide an analysis of accomplishments in relation to each goal on the grantee's currently approved work program and will detail problems, planned changes and training and technical assistance needs. In addition, effectiveness of each goal will be assessed by relating the progress made toward achieving the goal to the appropriate Standard(s) of Effectiveness.

(ii) Grantees funded under Section 232 may be requested by the Administering Office to prepare a report in narrative form instead of using CSA Form 440. In such cases the requirement will be stated in the Special Conditions attached to the grant. These Conditions will also detail the information required which will include, at a minimum, a comparison of actual accomplishments with goals of the work program and an assessment of effectiveness.

(iii) In order to assure that the quantifiable data being reported for programs funded under section 222(a) of the Economic Opportunity Act are uniform, CSA requires that Section 1.A. (measurable accomplishments) on the Form 440 includes all relevant data i.e., data resulting from activities undertaken as part of the work program, as indicated under the appropriate Program Account in Attachment B to this subpart.

(2) *Frequency*—(i) *Submission dates.* (A) Except as indicated in paragraph (c)(2) (ii) and (iii) of this section each grantee is responsible for submitting to the appropriate CSA Administering Office a semi-annual and an annual Project Progress Report. Reports will be submitted 30 working days following the end of the second and fourth quarters of the grantee's Program Year of Program Account 01. (If not funded for PA 01, grantee should use its highest funded Program Account as a reference point for submission of PPR reports.)

(B) Administering Offices and grantee officials may jointly agree in writing, to adjustments in the above reporting dates where this will make local progress reviews more meaningful and supportive of the mutual program direction and review objectives of the grantee and administering office. Also the administering office may reduce the frequency of reporting. However, except at the request of the grantee, the period covered by the PPR must always conform to that covered by the financial reports.

(ii) *Grants with termination dates.* If a grant has a termination date, the grantee also is responsible for filing a final Project Progress Report within 90 calendar days following the termination date.

(iii) *Special requirements.* There may be instances where more frequent reporting will be required, e.g. in the cases of developmental grants; when the grantee has a history of poor performance; etc. In these instances the funding office may require, as a condition of the grant, that Project Progress Reports be filed on a quarterly basis. However, in keeping with the Standards, reporting cannot be required more frequently than quarterly unless an exception is obtained by CSA (Headquarters) from OMB. It should be noted that more frequent reporting is not intended to be imposed routinely but rather on an exception basis such as when the aforementioned circumstances exist.

(3) *Number of Copies.* One copy of the report is to be sent to the appropriate CSA Administering Office. (Grantees receiving grants which are administered by both a Regional Office and a Headquarters Program Office will send a copy of the PPR to each.) Additionally, grantees receiving funds under Sections 221 and 222(a) of the Act shall send one copy to the appropriate SEO for information.

(4) *Availability of CSA Form 440.* Supplies of CSA Form 440 may be ordered from:

CSA Distribution Center, 49 "L" Street SE.,  
Washington, D.C. 20003.

[42 FR 43843, Aug. 31, 1977, as amended at 44 FR 61347, Oct. 25, 1979]

## ATTACHMENT A

Page 1

Page— of—

COMMUNITY SERVICES ADMINISTRATION  
PROJECT PROGRESS REVIEW REPORT☐ 1st Qtr.  
☐ 2nd Qtr.  
☐ 3rd Qtr.

(Check applicable box)

☐ ANNUAL  
☐ FINALReserved for  
OMB Approval  
DATE SUBMITTED

NAME OF GRANTEE

GRANTEE NO.

PROGRAM ACCOUNT PROJECT TITLE

Information, Referral and Follow-up

PROJECT GOAL—To provide outreach, referral and follow-up services to 650 low-income target area residents using neighborhood center staff, Policy Advisory Committees and minimum of 25 volunteers

STANDARD(S) OF  
EFFECTIVENESS,  
(No.) A-II, III, IV, V.

## 1. ACCOMPLISHMENTS

A. MEASURABLE—During this period, 30 volunteers assisted CAA in performing outreach and home visitations. Overall, information on community programs was given directly to 500 residents; 350 were referred to other organizations for assistance; follow-up was conducted on 200 of these.

B. NON-QUANTIFIABLE—The County Department of Human Services has formally requested the CAA to perform outreach for Title XX, Community Development and Food Stamp programs, CAA is doing preliminary eligibility screening for these programs to speed up processing. County-wide computerized I&amp;R system is being considered by County Commission.

## 2. PROBLEMS

Low attendance at Policy Advisory Committee meetings. No quorum for three of last four meetings. Three PAC positions are vacant. Follow-ups hampered by (a) inadequate record-keeping in two centers and (b) lack of travel funds.

## 3. PLANNED CHANGES\*

Elections will be held early next month to fill vacant PAC positions. After this SEOO will conduct training for PAC members on their roles and responsibilities. Recordkeeping system is being computerized to facilitate client "tracking." Budget is being revised to allocate more funds to travel.

## 4. TRAINING AND TECHNICAL ASSISTANCE NEEDS\*

Outreach supervisors need training in planning center activities. PAC members need motivation; contact with Federal officials would help.

## 5. ASSESSMENT OF EFFECTIVENESS

Service delivery remains generally efficient (Standard A-II) but lack of participation by low-income (Std A-III) causes concern. Greater involvement of volunteers (Stds A-IV and A-V) has improved CAA's "image" in community.

\*Do not complete when filing final report or  
in annual reports for individual projects  
which will not be refunded.

## CERTIFICATION

The undersigned certifies that this report has been completed in accordance with applicable instructions; that it is true to the best of his/her knowledge, information and belief; and that it has been approved, or reviewed and approved, as indicated in Item 6, below.

## 6. THIS REPORT HAS BEEN (Check appropriate box.)

☐ APPROVED BY GRANTEE'S GOVERNING BOARD☐ REVIEWED BY  
GRANTEE'S  
ADMINISTERING  
BOARD AND  
APPROVED BY ITS  
GOVERNING  
OFFICIALS

## 7. DATE OF APPROVAL

8. TYPED NAME & TITLE OF PRINCIPAL GOVERNING OFFICIAL OR  
PRINCIPAL OFFICER OF GOVERNING BOARD

9. SIGNATURE

10. DATE

CSA FORM 440 (REV. JUL 1977) (REPLACES OEO FORM 440, DATED AUG 1972, WHICH IS OBSOLETE.)



INSTRUCTIONS FOR COMPLETING CSA FORM  
440

There should be a brief report for each project goal listed on the approved CSA Form(s) 419. Therefore, there should be a separate CSA Form 440 for each goal. (Note: The annual report also should give a separate summary for the entire program year for the project as a whole in addition to progress toward each goal. In this case, mark **SUMMARY** in the Project Goal box.)

In addressing topics 1 through 5 on the Form 440, the following information should be included for each goal:

## ITEM

1. *Accomplishments:*

a. *Measurable.*—Describe achievements in relation to approved goals in measurable terms; include unanticipated benefits to community or target groups.

b. *Nonquantifiable.*—Give brief description on nonquantifiable accomplishments.

2. *Problems.*—Reasons for failure to reach project goals.

3. *Planned Changes.*<sup>1</sup>—Indication of planning or project management changes scheduled as a result of PPR analysis.

4. *Training and Technical Assistance Needs.*<sup>1</sup>—Description of assistance needed from CSA or other sources.

5. *Assessment of Effectiveness.*—Assessment of grantee status with respect to general and/or specific standards of effectiveness applicable to this goal. Appraise effectiveness in light of costs and other uses of resources.

6-10. (Certification section).—Complete this section on page 1 only of your report.

ATTACHMENT B—DATA REQUIRED IN  
PPR REPORTS FOR PROJECTS FUNDED  
UNDER SECTION (222) (A) OF THE  
E.O.A.*No. and Program Account*

06. *Senior Opportunities and Services—Independent Living 222(a)(2).*

Total Number of Beneficiaries

Number Beneficiaries of Housing Services

Number Beneficiaries of Nutrition Services

Number Beneficiaries of Home Care Services

Number Beneficiaries of Health Services

Number Beneficiaries Elderly Day Care Services

Number Beneficiaries other Services (e.g. counseling, safety, education, etc.)

Total Number Elderly Community Centers

<sup>1</sup>Do not complete when filing final or annual reports for individual projects which will not be continued or renewed in the next Program Year.

Total Number Beneficiaries of Community Centers

07. *Senior Opportunities and Services—Access 222(a)(2).*

Total Number Elderly Transported to Services

Total Number New Beneficiaries

Number New Beneficiaries SSI

Number New Beneficiaries Food Stamp

Total Number Elderly Provided Training

Total Number Elderly Provided Jobs

12. *Nutrition—Access (222)(a)(1).*

Total Number New Beneficiaries

Number New Beneficiaries Food Stamp

Number New Beneficiaries of WIC

Number New Beneficiaries of School Breakfast

Number New Beneficiaries of School Lunch

Number New Beneficiaries of Elderly Feeding

Number New Beneficiaries Summer Feeding

Total Non-CSA Dollars Mobilized

Number New Beneficiaries of Day Care Feeding

Number New Beneficiaries of other (Identify)

13. *Nutrition—Self-Help (222)(a)(1).*

Total Number Beneficiaries

Number Beneficiaries from Buying Clubs

Number Beneficiaries from Community Cannery

Number Beneficiaries from Food Gleaning

Number Beneficiaries from Food Raising

Total<sup>2</sup> Estimated dollar value of Above Self-Help Efforts

15. *Nutrition—Consumer Education (222)(a)(1).*

Total Number Beneficiaries

16. *Nutrition—Crisis Relief (222)(a)(1).*

Total Number Beneficiaries

21. *Energy—Weatherization (222)(a)(5).*

Total Number Beneficiaries

Total Number Units Weatherized

Number Rental Units Weatherized

Number Elderly Head of Household Units Weatherized

Total Number Persons Employed in Weatherization

Number Persons Employed using CETA Funds

Number Persons Employed using CSA Funds

Number Persons Employed using Other (Identify) Funds

Total Non-CSA Dollar Resources Mobilized

22. *Energy—Crisis Intervention (222)(a)(5).*

Total Number Beneficiaries

Number People Benefiting from Payment of Fuel Bills

Number People Benefiting from Emergency Energy Related Home Repairs

Total Dollar Payment Other than Home Heating Payments

<sup>2</sup>Explain the Basis for Estimation.

## § 1050.90

Total Number Households Assisted  
Number Elderly Head of Households Assisted

Number Rental Households Assisted

23. *Energy—Consumer Information, Education and Legal Assistance* (222)(a)(5).

Total Number Beneficiaries

Number Beneficiaries 18 years and under

Number Beneficiaries 55 years and over

25. *Energy—Alternative Technologies* (222)(a)(5).

Total Number Beneficiaries

Number Beneficiaries of Solar Space Heating

Number Beneficiaries of Solar Domestic Water Heating

Number Beneficiaries of Wind Technology

Number Beneficiaries of Methane/Alcohol

Number Beneficiaries of Wood/Coal Stove

Number Beneficiaries of other (Describe)

Total Number Persons Employed

Number Employed with CETA Funds

Number Employed with CSA Funds

Number Employed with Other Funds

31. *Rural Housing—Housing Production* (222)(a)(4).

Total Number Housing Units

Number Units Constructed

Number Units Repaired and Rehabilitated

Total Non-CSA Dollars Mobilized

32. *Rural Housing—Access to Federal Home Loan Service* (222)(a)(4).

Total Number Loans and Grants

Number Loans and/or Grants Submitted

Number Loans and Grants Approved

Total Dollar Amount Approved Loans and/or Grants

Total Number Persons Trained

Number Trained with CETA Funds

Number Trained with CSA Funds

Number Trained with Green Thumb Funds

Total Non-CSA Dollars Mobilized

Number Trained with Other Funds (Identify)

33. *Rural Housing Training and Technical Assistance* (222)(a)(4).

Total Number of Beneficiaries Trained and/or Provided Technical Assistance

34. *Rural Housing—Small Town Community Development* (222)(2)(4).

Total Number of Public Officials Trained and/or Provided Technical Assistance

35. *Rural Housing—Housing Consumer Assistance* (222)(a)(4).

Total Number of Beneficiaries

36. *Rural Housing—Management Services* (222)(a)(4).

Total Number Beneficiaries Counseled

Total Number Housing Units Managed

80. *Energy—Emergency Energy Assistance* (222)(a)(5).

Total Number Beneficiaries

Total Number Households Assisted

Number Elderly Head of Households

Number Rental Households Assisted

Total Dollar Payment Heating Fuel Bills

Dollar Payment Oil Heating Fuel Bills

## Title 45—Public Welfare

Dollar Payment Gas Heating Fuel Bills

Dollar Payment Electricity Fuel Bills

Dollar Payment Other Fuel Bills

[44 FR 61347, Oct. 25, 1979]

### Subpart J—Payment Requirements (CSA Instruction 6800-10)

#### § 1050.90 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment I).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment J).

(3) OEO Instruction 6806-05, Limitations on Program Expenditures.

(4) CSA Instruction 6800-12, Grant Close-out Procedures (Uniform Federal Standard) (45 CFR § 1050.110).

(5) CSA Instruction 6800-13, Suspension and Termination Procedures (Uniform Federal Standard) (45 CFR § 1050.120).

(6) CSA Instruction 6710-1, Change 10, "Preparation of CSA Form 314, Statement of CSA Grant."

(7) Treasury Department Circular No. 1075, as revised, "Regulations Governing Withdrawal of Cash From the Treasury for Advance Under Federal Grant and Other Programs."

(8) Treasury Fiscal Requirements Manual, Part VI, "Other Fiscal Matters."

#### § 1050.91 Definitions.

(a) *Letter-of-Credit.* A Letter-of-Credit is an instrument certified by an authorized official of a Federal funding agency that authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve bank and the grantee's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

(b) *Advance by Treasury check.* An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before outlays are made by the grantee or through the use of predetermined payment schedules.

(c) *Reimbursement by Treasury check.* A reimbursement by Treasury check is a Treasury check paid to a grantee upon request for reimbursement from the grantee.

## § 1050.92 Standard.

(a) Payments can be made to grantees through a letter-of-credit and an advance by Treasury check.

(b) Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph (d) of this section, the letter-of-credit method shall be used by CSA if all of the following conditions exist:

(1) If there is or will be a continuing relationship between a grantee and CSA for a least a 12 month period and the total amount of advance payments expected to be received within that period from CSA is \$120,000 or more, as prescribed by Treasury Circular No. 1075. For joint funded projects the Treasury has authorized a dollar criteria of \$120,000.

(2) If the grantee has established or demonstrated to CSA the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) If the grantee's financial management system meets the standards for fund control and accountability prescribed in 45 CFR 1050.60 (CSA Instruction 6800-7, Standards for Financial Management Systems.)

(c) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph (b) of this section, except those in paragraph (b)(1) of this section.

(d) A reimbursement by Treasury check shall be the preferred method if the grantee does not meet the requirements specified in paragraphs (b)(2) and (b)(3) of this section. At the option of CSA this method may also be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, CSA shall make payment within thirty days after receipt of the billing unless the billing is improper.

(e) When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by the sponsoring agency.

(f) (1) Unless otherwise required by law, CSA shall not withhold payments for proper charges made by grantees at any time during the project or program period unless (i) a grantee has failed to comply with the program objectives, general or special conditions, or CSA reporting requirements; or (ii) the grantee is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States. (See § 1050.110 and § 1050.115 (CSA Instructions 6800-12 and 6800-13) for procedures in cases of closeouts, suspensions and terminations).

(2) Under such conditions, CSA may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

[42 FR 18034, Apr. 4, 1977, as amended at 43 FR 44532, Sept. 28, 1978]

## § 1050.93 CSA implementing policies and procedures.

(a) *Policy.* Federal funds awarded under CSA grants will be made available (advanced) by letter of credit or by check, depending upon the amount of the grant. Funds for grants of less than \$120,000 annually will be advanced by the periodic issuance of Treasury checks. Funds for grants of over \$120,000 and where there is an anticipated continuing relationship for one year will be made available through the issuance of a Treasury Department Letter of Credit.

(b) *Grants under \$120,000 annually.* (1) Fund advances for grants totaling less than \$120,000 annually will be made by a monthly check to the grantee. The amount of the monthly check will be computed based upon a grantee's anticipated rate of expenditure over the period of the grant, and subject to adjustment based upon an



analysis of the required quarterly financial reports from the grantee. All Treasury checks will reflect the grantee number and the grant action to which the funds pertain. In the event subsequent funding actions result in a grantee's annual funding level to exceed \$120,000, he will be notified that his funding procedures are to be changed and the necessary forms for conversion to Letter of Credit procedures will be sent.

(2) *Special checks.* (i) When a grantee anticipates needing cash in excess of that provided by the issuance of a monthly check, he must submit a written justification to the appropriate administering office for review and subsequent submission to the Finance and Grants Management Division, Headquarters, if approval is recommended.

(ii) Before approving issuance of a special check, the Finance and Grants Management Division will review current expenditure rates and cash balances reported on the financial reports. Delays in submission of these reports to CSA will result in delays in approval of special checks.

(c) *Grants over \$120,000 annually.* When a letter-of-credit is issued the grantee will not be required to maintain a separate bank account for funds obtained in this manner except in those cases where the letter-of-credit agreement provides that draw downs will be made when the grantee's checks are presented to the bank for payment. Grantees will delay, to the extent possible, all drawdowns on the letter-of-credit until after their organizations have issued checks for disbursements properly chargeable to Federal funds.

(1) *Letter of credit procedure—(i) Selection of commercial bank.* (A) Grantees shall select a commercial bank which will agree to receive Payment Vouchers on Letter of Credit (TUS 5401) drawn on the Treasurer of the United States and forward these vouchers to the applicable Federal Reserve Bank or branch. In addition the grantee will assure that they comply with the Uniform Federal Standards applying to cash depositories (See § 1050.10 (CSA Instruction 6800-2).) The grantee shall notify the Finance and Grants Management Division,

CSA Headquarters, of the name of the commercial bank, title of the bank account, and location of the applicable Federal Reserve Bank or branch.

(ii) *Authorized signature card.* (A) The Finance and Grants Management Division in Headquarters or Financial Services Branch in the regions will send the grantee three Standard Forms 1194, Authorized Signature Card for Payment Vouchers on Letters of Credit, as part of the grant package. When properly completed by the grantee, these cards will provide the appropriate Federal Reserve Bank or branch with specimen signatures of grantee officials authorized to sign Payment Vouchers on Letter of Credit or withdrawal of funds. A sample copy of SF 1194 and instructions for completion are provided in Exhibit II.

(B) Two copies of the properly completed signature card will be returned, with all other required documents, to the Finance and Grants Management Division, CSA Headquarters, or to the Financial Service Branches in regional offices, depending on whether the grant is administered by CSA Headquarters or by a regional office.

(C) A change of persons authorized to sign payment vouchers or a change in grantee name, address, or commercial bank will require that a grantee submit a new set of signature cards to the Headquarters Finance and Grants Management Division.

Blank signature cards may be obtained from that office or from the Financial Services Branches in the regional offices.

(D) The Finance and Grants Management Division, or the Financial Services Branches for regional grants, will notify the grantee when the signature cards and letter of credit have been sent to the Federal Reserve Bank or Branch via the Treasury Department. The grantee will not present a payment voucher which includes the new or changed information until it has received such notification. The grantee should assure that it has sufficient funds for operating until receipt of the notification.

(E) Each letter of credit must have its own signature card. If there is a need to change a prior signature card

for a specific grant, a new signature card must be submitted to the Finance and Grants Management Division, CSA Headquarters.

(F) Grantees must provide signatures for at least two persons in order to enable the proper completion of the payment voucher (Form TUS 5401).

(1) *Withdrawal of funds.* (i) As funds are needed, the grantee will prepare and submit the original, duplicate, and triplicate copies of the Payment Voucher on Letter of Credit (Forms TUS 5401) to its commercial bank.

The commercial bank will transmit all forms to the Federal Reserve Bank or branch. The recipient organization will retain the quadruplicate copy for its own records. Instructions for preparing the form are provided in Exhibit III.

(ii) A supply of Forms TUS 5401 will be sent to each grantee with the letter-of-credit. Additional forms may be obtained by writing to the Finance and Grants Management Division, CSA Headquarters. Payment vouchers are preprinted with CSA's name and station symbol. They cannot be used for withdrawals from letters-of-credit issued by other Federal agencies. Only

Forms TUS 5401 received from CSA may be used for withdrawal of funds from CSA letters-of-credit.

(iii) *Guidelines for withdrawal.* The U.S. Treasury Department policy provides that withdrawals by grantees shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements needed in carrying out the purpose of the approved program or project. Where a grantee makes advances to a delegate agency, they shall conform substantially to the same standards of timing and amount as applicable to advances to the primary grantee. Grantee drawdowns shall not ordinarily be made more frequently than daily in order to maintain a minimum amount of cash on hand. However, the amount withdrawn may not exceed the dollar limitation placed on the letter-of-credit by CSA without prior CSA approval. Ordinarily, withdrawals should not be made for less than \$10,000 nor for more than \$1,000,000, and in no case in excess of \$5,000,000 unless authorized by CSA, and should never exceed the amount of cash needed to operate for a thirty (30) day period.

## ATTACHMENT—EXHIBIT I

## LETTER OF CREDIT NUMBER

[Auth: TREASURY DEPARTMENT CIRCULAR No. 1075. Revised]

|                                                                                                                                                                                                      |                                              |                      |                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|----------------------|------------------|
| (1) ISSUING AGENCY                                                                                                                                                                                   |                                              | LETTER OF CREDIT (2) |                  |
| LETTER, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506                                                                                                              |                                              | AMENDMENT NUMBER     |                  |
|                                                                                                                                                                                                      |                                              | (3)                  |                  |
| AGENCY STATION SYMBOL (FOR                                                                                                                                                                           | AGENCY                                       | USE)                 | EFFECTIVE DATE   |
| 81-00-9701 (4)                                                                                                                                                                                       | (5)                                          |                      | (6)              |
| TO: The Federal Reserve Bank,                                                                                                                                                                        | BRANCH                                       | BANK                 | AT               |
| (7)                                                                                                                                                                                                  | (8)                                          |                      |                  |
| In accordance with the authorization of the Fiscal Assistant Secretary, Treasury Department, there is hereby authorized for the account and responsibility of the issuing agency a letter of credit: |                                              |                      |                  |
| FOR DEPOSIT ONLY TO                                                                                                                                                                                  |                                              |                      |                  |
| IN FAVOR OF (9)                                                                                                                                                                                      | (10) Recipient's                             | ACCOUNT              |                  |
| AMOUNT AUTHORIZED                                                                                                                                                                                    | <input type="checkbox"/> EACH MONTH,         | PRIOR AUTHORIZATION  | THIS CHANGE      |
| \$ (11)                                                                                                                                                                                              | <input type="checkbox"/> EACH QUARTER,       | \$ (13)              | Increase \$ (14) |
|                                                                                                                                                                                                      | <input type="checkbox"/> WITHOUT TIME LIMIT, |                      | Decrease \$      |
|                                                                                                                                                                                                      | <input type="checkbox"/> (12)                |                      |                  |

(15)

☐ The unpaid balance of this letter of credit will remain available until you are advised in writing by the Treasury Department that this letter has been revoked.\*

## LETTER OF CREDIT NUMBER—Continued

[Auth: TREASURY DEPARTMENT CIRCULAR No. 1075. Revised]

OR

☐ The unpaid balance of this letter of credit is revoked at the end of each period indicated and the full amount reestablished at the beginning of the following period until you are advised in writing by the Treasury Department that this letter has been revoked.\*

The amount of this letter of credit is hereby certified to be drawn against, upon presentation to you of Form TUS 5401, Payment Voucher on Letter of Credit, by the official(s) of the recipient organization whose signature(s) appear(s) on the Standard Form 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, attached hereto or previously or subsequently furnished you through the Treasury Department.

The amount of each payment voucher paid by a Federal Reserve Bank or branch to a designated commercial bank for credit to the account of the recipient organization shall constitute payment to the recipient organization by the United States.

I certify to the Treasury Department that the payments authorized herein are correct and proper for payment from the appropriations or funds legally committed and available for the purpose, when paid in accordance with the terms and conditions cited above.

\*This letter of credit is irrevocable to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement.

DATE CERTIFIED.....  
(16) AUTHORIZED CERTIFYING OFFICER..  
TYPED NAME AND TITLE .....

1193-103

## EXHIBIT I

## EXPLANATION OF INFORMATION ON LETTER OF CREDIT

1. *Issuing Agency.* Name and address of CSA Headquarters.

2. *Letter of Credit Number.* Number assigned by the agency to identify a particular Letter of Credit.

3. *Amendment Number.* This will represent a change to letter of credit.

4. *Agency Station Symbol.* The No. 81-00-9701 is the number assigned the Treasury Department to identify CSA Letters of Credit. It will appear on all Letters of Credit issued by CSA.

5. *For Agency Use.* Shows grantee identification number and grant action number.

6. *Effective Date.* Effective date of the Letter of Credit.

7. *To the Federal Reserve Bank.* Location of Federal Reserve Bank serving Federal Reserve Branch Bank.

8. *Branch Bank at.* Location of Federal Reserve Branch serving grantee's commercial bank.

9. *In Favor of.* Name and address of grantee, same as shown on the signature card and the CSA Form 314, Statement of CSA Grant.

10. *For Deposit Only to.* Name and address of commercial bank and recipient's account.

11. *Amount Authorized.* This space will be left blank.<sup>1</sup>

12. *Without Time Limit.* This space will be left blank.<sup>1</sup>

13. *Prior Authorization.* This space will be left blank.<sup>1</sup>

14. *This Change.* The amount of increase or decrease authorized by this Letter of Credit amendment.

15. This space will be left blank.<sup>2</sup>

16. *Authorized Certifying Officer.* Signature of authorized CSA official.

## ATTACHMENT—EXHIBIT II

## AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT

[Standard Form 1194, 6 Treasury FRM 1000, Fiscal Service, Bureau of Accounts]

Letter of Credit Number

Federal Reserve Bank

(1)

(2)

Letter of Credit Issued in Favor of (Recipient)

Issued by (Federal Agency)

(3)

(4)

<sup>1</sup>Item 11, "Amount Authorized," equals item 13 "Prior Authorization," plus or minus item 14, "This Change."

<sup>2</sup>The Grant Accounting Branch, Finance and Grants Management Division, will complete Items 11, 12, 13, 14, and 15 before submitting a letter of credit to the U.S. Treasury.



## AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT—Continued

[Standard Form 1194, 6 Treasury FRM 1000, Fiscal Service, Bureau of Accounts]

|                                                                                                                                |                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (5)                                                                                                                            | <input type="checkbox"/> Only one Signature Required on Payment Vouchers<br>or<br><input type="checkbox"/> Any Two Signatures Required to Sign or Countersign |
| Signatures of Individuals Authorized to Draw on the Cited Letter of Credit                                                     |                                                                                                                                                               |
| Typed Name and Signature (6)                                                                                                   | Typed Name and Signature (6)                                                                                                                                  |
| Typed Name and Signature (6)                                                                                                   | Typed Name and Signature (6)                                                                                                                                  |
| I certify that the signatures above are of the individuals authorized to draw payment vouchers for the cited letter of credit. | APPROVED:                                                                                                                                                     |
| (7)                                                                                                                            | (8)                                                                                                                                                           |
| Date and Signature of Authorizing Official (Recipient)                                                                         | Date and Signature of Agency Certifying Officer                                                                                                               |

## COMPLETION OF SIGNATURE CARDS

Following are instructions for completing the Signature Cards:

1. *Letter of Credit Number.* When establishing a new Letter of Credit the Finance and Grants Management Division will complete this block prior to sending the forms to the grantee for signatures. To request a change of signatures shown on a previous Form 1194, the grantee should indicate, in this block, the assigned Letter of Credit number.

2. *Federal Reserve Bank.* The name of the Federal Reserve Bank or branch, as the case may be, that will serve the grantee's commercial bank will be entered by the Finance and Grants Management Division.

3. *Letter of Credit Issued in Favor of (Recipient).* Enter full name and address of grantee organization. Include city, state and zip code. This must agree with the information on the Statement of CSA Grant (CSA Form 314). If any of the information on the CSA Form 314 is incorrect, contact process-

ing unit before completing the Form 1194.

4. *Issued by (Federal Agency).* The Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506; Code 81-00-9701.

5. *Signatures of Individuals, etc.* Mark X in space to indicate "any two signatures required to sign or countersign."

6. *Typed Name and Signature.* Enter the typed names and signatures of at least two (and preferably more than two) individuals authorized to sign payment vouchers (Form TUS-5401) to withdraw funds from Letter of Credit. The typed names must appear exactly as the individuals sign their names.

7. *Certification Block. Date and Signature of Authorized official (Recipient).* Date and sign. The signature should be that of the grantee official authorized to certify that the signatures are those of persons authorized to withdraw funds from the Letter of Credit.

8. *Approved.* Leave this space blank for CSA use.

ORIGINAL - Drawer will forward this form to bank for transmission to Federal Reserve Bank.

|                                                                                                                                                                                    |  |                                                                                                                                                                                                                                                            |  |                           |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------|--|
| I-TFRM 6-2000                                                                                                                                                                      |  | PAYMENT VOUCHER ON LETTER OF CREDIT<br>(TO BE COLLECTED AS A NON-CASH ITEM)<br>The drawer's bank shall be the agent of the drawer for the collection of this instrument and each subsequent collecting commercial bank shall be the subagent of the drawer |  | 3051638<br>SERIAL NO.     |  |
| VOUCHER NO.<br>(1)                                                                                                                                                                 |  | LETTER OF CREDIT NO.<br>(2)                                                                                                                                                                                                                                |  | SYMBOL 17-865             |  |
| NAME AND ADDRESS OF DRAWER<br>(6)                                                                                                                                                  |  | AGENCY LOCATION CODE<br>81-00-9701 (3)                                                                                                                                                                                                                     |  | DATE VOUCHER DRAWN<br>(4) |  |
| NAME AND ADDRESS OF DRAWER'S BANK<br>(7)                                                                                                                                           |  | FEDERAL RESERVE BANK OR BRANCH<br>(8)                                                                                                                                                                                                                      |  | AMOUNT<br>\$ (5)          |  |
| NAME AND ADDRESS OF U.S. AGENCY<br>COMMUNITY SERVICES ADMINISTRATION<br>Grant Accounting & Management Branch<br>1200 19th Street NW.<br>Washington, D.C. 20506                     |  | I certify that this payment voucher has been drawn in accordance with the terms and conditions of the letter of credit cited and that the amount for which drawn is properly for credit to the account of the drawer at the drawer's bank.                 |  |                           |  |
|                                                                                                                                                                                    |  | (9)<br>(Signature)                                                                                                                                                                                                                                         |  | (Title)                   |  |
|                                                                                                                                                                                    |  | (9)<br>(Countersignature)                                                                                                                                                                                                                                  |  | (Title)                   |  |
| For authorization of Fiscal Assistant Secretary, Department of the Treasury, debit the general account of the U.S. Treasury and pay to the presenting bank the amount shown above. |  | FOR FEDERAL RESERVE BANK USE ONLY                                                                                                                                                                                                                          |  |                           |  |
| TFS FORM 5401 EDITION OF 5-75 IS OBSOLETE                                                                                                                                          |  | (Date Debited) (Authorized Signature)                                                                                                                                                                                                                      |  |                           |  |
| PREPARATION OF FORM TUS 5401                                                                                                                                                       |  | DEPARTMENT OF THE TREASURY - FISCAL SERVICE<br>BUREAU OF GOVERNMENT FINANCIAL OPERATIONS                                                                                                                                                                   |  |                           |  |

(1) *Voucher Number.* Grantees will number payment vouchers consecutively beginning with "1". Alphabetical designations

will not be used as part of the voucher number. Amendments to the Letter of Credit will not interrupt the consecutive numbering of payment vouchers by the grantee.

(2) *Letter of Credit Number.* Enter the assigned Letter of Credit number. This is the eight-digit number shown on the Letter of Credit received from CSA.

(3) *Agency Station Symbol.* This is an eight-digit code assigned to CSA by the U.S. Treasury Department and is pre-printed on the vouchers sent to grantees.

(4) *Data Voucher Drawn.* Enter the date voucher is prepared and presented to the bank. To facilitate entering this date on a computer, the date must be written as follows:

|                   |    |    |    |              |
|-------------------|----|----|----|--------------|
| <u>Date</u>       | 02 | 20 | 77 | <u>Write</u> |
| February 20, 1977 |    |    |    | Year         |
|                   |    |    |    | Day          |
|                   |    |    |    | Month        |

(5) *Amount.* Enter the dollar amount to be withdrawn. Round off to hundreds or thousands of dollars.

Example: \$35,500.00.

(6) *Name and Address of Drawer.* Complete name and address of grantee, including zip code, as shown on the Letter of Credit.

(7) *Name and Address of Drawer's Bank.* Enter name and address of the bank to which the payment voucher will be presented.

(8) *Federal Reserve Bank or Branch.* Enter name (city) of Federal Reserve Bank or Branch as shown on Letter of Credit.

(9) *Signatures.* Vouchers must be signed by two of the designated signees exactly as their signatures appear on current signature cards.

#### DISTRIBUTION OF PAYMENT VOUCHERS

Original, duplicate and triplicate: Presented to grantee's bank for payment. The Bank will retain the original and forward the duplicate and triplicate to the Federal Reserve Bank for their records.

Quadruplicate: Retain for grantee files.

[42 FR 18034, Apr. 4, 1977, as amended at 43 FR 44532, Sept. 28, 1978]

#### Subpart K—Revision of Financial Plans [Reserved]

#### Subpart L—Grant Closeout Procedures (CSA Instruction 6800-12)

#### § 1050.110 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher

Education, Hospitals, and Other Nonprofit Organizations (Attachment K).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment L).

(3) OEO Instruction 6302-2, CAAs: Eligibility and Establishment.

(4) OEO Instruction 6730-1, Denial of Application for Refunding.

(5) CSA Instruction 6800-4, Retention and Custodial Requirements for Records. (45 CFR § 1050.20). (Uniform Federal Standard.)

(6) CSA Instruction 6800-5, Program Income. (45 CFR 1050.40.) (Uniform Federal Standard.)

(7) CSA Instruction 6800-8, Financial Reporting Requirements. (45 CFR § 1050.70.) (Uniform Federal Standard.)

(8) CSA Instruction 6800-9, Monitoring and Reporting Requirements. (45 CFR § 1050.70.) (Uniform Federal Standard.)

(9) CSA Instruction 6800-10, Payment Requirements. (45 CFR § 1050.90.) (Uniform Federal Standard.)

(10) CSA Instruction 6800.11, Revision of Financial Plans. (45 CFR § 1050.100.) (Uniform Federal Standard.)

(11) CSA Instruction 6800-13, Suspension and Termination Procedures. (45 CFR § 1050.115.) (Uniform Federal Standard.)

(12) CSA Instruction 6800-15, Property Management Standards. (45 CFR § 1050.130.) (Uniform Federal Standard.)

(13) OEO Instruction 6801-1, and Changes 1 and 2, Grantee Fiscal Responsibility and Auditing.

(14) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B, and VII of the EOA of 1964 as amended. (45 CFR § 1067.5.)

#### § 1050.111 Definitions.

(a) "Closeout"—The closeout of a grant is the process by which CSA determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and CSA.

(b) "Date of completion"—The date of completion is the date on which all work under the grant is completed or the date on the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs"—Disallowed costs are those charges to a grant which CSA determines to be unallowable in accordance with the applicable Federal cost principles, other conditions contained in the grant agreement and CSA Instructions.

## § 1050.112 Standards.

The following requirements shall be applicable to the closeout of all CSA grants:

(a) Upon request, CSA shall make prompt payments to the grantee for allowable reimbursable costs under the grant being closed out.

(b) Within 90 calendar days after completion of a grant, the grantee shall refund any balance of unobligated cash that CSA has advanced or paid, and that is not authorized to be retained by the grantee for use in other grants or for other purposes specifically authorized in writing by CSA. A check (payable to CSA) will accompany the final financial report. (See reference (7) for procedures.)

(c) Within 90 calendar days after the completion of a grant, the grantee shall submit to CSA all financial, performance, and other reports required as conditions of the grant. (See references (7), and (8), and (13) for procedures.) CSA may grant extensions when requested by the grantee.

(d) When authorized by the grant agreement, CSA shall make a settlement for any upward or downward adjustment to the Federal share of costs after these reports are received.

(e) The closeout of a grant shall not, of itself, end or otherwise affect: (1) The grantee's responsibility to account for any property acquired with Federal funds, or received from the Government, in accordance with the provisions of § 1050.130 (CSA Instruction 6800-15) Property Management Standards;

(2) The grantee's responsibility to account for program income in accordance with the provisions of § 1050.40 (CSA Instruction 6800-5);

(3) The retention period for, or Federal rights of access to, grant records pursuant to § 1050.20 (CSA Instruction 6800-4).

(f) In the event a final audit has not been performed prior to the closeout of the grant, CSA retains the right to recover an appropriate amount, after fully considering the recommendations on disallowed costs resulting from any subsequent audit which may be performed. (See reference (13) for CSA audit requirements.)

## § 1050.113 CSA implementing policies and procedures.

(a) *General.* Procedures for various activities to be undertaken in closeouts will be found in references (3) through (14). This subpart provides additional detail on required closeout procedures relating to audits. (See reference (13) for basic procedures.)

(b) *Closeout Audits—(1) Scope of Audit.* (i) Within 90 days after the date of completion of a CSA grant, the grantee will be required to submit a final audit of grant operations. This audit will be done in accordance with the Accounting System Survey and Audit Guide, CSA Manual 2410-1. If the grantee will no longer be receiving CSA funds from other grants, the scope of audit should be adjusted as follows:

(A) The independent auditor will not be required to render an appraisal of the grantee's accounting system and internal controls. However, he will be required to review internal accounting controls in accordance with generally accepted auditing standards to ascertain the degree of reliance he can place on them in determining the extent of his audit tests and procedures. Therefore, the audit report will normally contain no comments or recommendations relative to the grantee's accounting system or internal controls.

(B) The independent auditor should explain in his audit report that the grantee will not continue to receive CSA funding and will not be involved in CSA programs as a grantee.

(C) The independent auditor should emphasize in his report any action required to clear the account such as recovery of any unexpended funds or disposition of grant property.

(ii) Where questions arise in regard to the audit of CSA grantees being closed out, independent auditors should contact the cognizant CSA Regional Auditor for guidance.

(2) *Audit disallowances.* The normal CSA audit disallowance procedures as set forth in reference (13) shall be followed for audit disallowances resulting from a final audit. Final audit disal-



## § 1050.115-1

lowances can only be satisfied by cash payments to CSA when the grant in question has been or is in the process of being closed out.

### **Subpart M—Suspension and Termination Procedures (CSA Instruction 6800-13)**

#### **§ 1050.115-1 References.**

(1) 45 CFR 1010 (OEO Instruction 6004-01a) Nondiscrimination in Federally-Assisted Programs of the Office of Economic Opportunity—Effectuation of Title VI of the Civil Rights Act of 1964;

(2) 45 CFR 1067.2 (OEO Instruction 6730-1) Denial of Application for Refunding;

(3) 45 CFR 1050.110 (CSA Instruction 6800-12) Grant Closeout Procedures;

(4) 45 CFR 1069.3 (CSA Instruction 6910-1a) Travel Regulations for CSA Grantees and Delegate Agencies.

#### **§ 1050.115-2 Definitions.**

(a) "Termination"—The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to its date of completion. The following do not constitute termination:

(1) Withdrawal of funds awarded on the basis of grantee's under estimate of the unobligated balance in a prior grant period;

(2) Failure on the part of CSA to refund a grantee or to make a continuation, extension, supplemental or other additional grant;

(3) Withdrawal of the unobligated balance as of the date of completion of a grant pursuant to the provision of CSA Instruction 6800-12 (45 CFR 1050.110);

(4) Annulment of a grant upon determination that the grant was obtained fraudulently or was otherwise illegal or invalid from inception;

(5) Withdrawal of unobligated funds from a CAA before the date of completion of its grant as a result of opt-out or de-designation proceedings under Section 210 of the Economic Opportunity Act of 1964 as amended, and OEO Instruction 6302-2.

(b) "Suspension"—The suspension of a grant is an action by CSA that temporarily suspends Federal assistance under the grant, pending a decision by CSA to terminate the grant.

#### **§ 1050.115-3 Failure to comply with grant terms and conditions.**

When a grantee has materially

## **Title 45—Public Welfare**

failed to comply with the terms and conditions of a grant (including all applicable CSA Instructions), CSA may suspend the grant in accordance with § 1050.115-4, terminate it for cause in accordance with § 1050.115-5, or take such other remedies as may be legally available and appropriate under the circumstances.

#### **§ 1050.115-4 Suspension.**

When a grantee has materially failed to comply with grant terms and conditions, CSA may suspend the grant, after giving the grantee reasonable notice and opportunity to show cause why the grant should not be suspended. Pursuant to section 604(2) of the Economic Opportunity Act as amended, CSA may summarily suspend a grant without previous notice in an emergency situation. If a grant is suspended, CSA may withhold further payments and prohibit the grantee from incurring further obligations of funds, pending corrective action by the grantee or a decision by CSA to initiate termination proceedings in accordance with § 1050.115-5. CSA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension, provided that they meet the provisions of the applicable Federal cost principles (for public grantees, the applicable provisions are those of Federal Management Circular 74-4).

#### **§ 1050.115-5 Termination for cause.**

Whenever it is determined that a grantee has failed to comply with the terms and conditions of its grant, CSA may terminate the grant in whole or in part at any time prior to its date of completion. CSA shall promptly notify the grantee of the determination and the reasons for the termination, together with its effective date. Pursuant to section 604(3) of the Economic Opportunity Act of 1964, as amended, such determination shall not be made unless the grantee has been afforded the opportunity for a full and a fair hearing on the termination of its grant. Payment made to grantees or recoveries by CSA or other Federal grantor agencies under grants terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

**§ 1050.115-6 Termination for convenience.**

CSA or the grantee may terminate any grant in whole or in part if and only if both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties must agree on the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated program or portion thereof after the effective date of termination and shall cancel as many outstanding obligations as possible. CSA shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to the effective date of termination.

**§ 1050.115-7 CSA implementing policies and procedures governing suspensions.**

(a) *Purpose and scope.* (1) This section establishes rules for the suspension of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be suspended for failure to comply with the terms and conditions of its grant, including applicable laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR 1010 (CSA Instruction 6004-01a) shall apply.

(3) Pursuant to section 604(2) of the Act and this subpart, the responsible CSA official may suspend a grant under the circumstances outlined in paragraph (a)(1) of this section. There are two kinds of suspension: (i) Suspension on notice, as provided for in paragraph (c) of this section, and (ii) summary suspension as provided for in paragraph (d) of this section. Summary suspension may be invoked only when the responsible CSA official de-

termines that an emergency situation exists (see paragraph (d)(1) of this section).

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question, the Regional Director of the Regional Office administering the grant in question, or the designee of any of these officials.

(2) The term "summary suspension" means suspension of a grant without prior notice to the grantee.

(c) *Suspension on notice.* (1) The responsible CSA official shall notify the grantee by letter or telegram that CSA intends to suspend a grant in whole or in part unless good cause is shown why the grant should not be suspended. In such letter or telegram the responsible CSA official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(2) The responsible CSA official shall also inform the grantee of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond an attempt to show why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be established by the responsible CSA official in the notice of intent to suspend. However, in no event shall the period of time within which the grantee must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend has been sent. If the grantee requests a meeting, the responsible CSA official shall fix a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by CSA.

(3) In lieu of the provisions of paragraph (c)(2) of this section dealing with the right of the grantee to request an informal meeting, the responsible CSA official may on his own initiative establish a time and place for such a meeting. However, in no event shall such a meeting be scheduled less than 7 days after the notice of intent to suspend is sent to the grantee.

(4) The responsible CSA official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the grantee of any such extension.

(5) At the time the responsible CSA official sends the notification referred to in paragraphs (c)(1), (2), and (3) of this section to the grantee, he shall also send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in paragraph (c)(2) and (3) of this section. In addition, the responsible CSA official may in his discretion give such notice to any other delegate agency.

(6) Within 3 days of receipt of the notice referred to in paragraphs (c)(1), (2), and (3) of this section the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting with the responsible CSA official contemplated herein (if not afforded a right to participate under the previous paragraphs) may request permission to do so from the responsible CSA official, who may in his discretion grant or deny such permission. In acting upon any such request from a delegate agency, the responsible CSA official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(7) In the notice of intent to suspend assistance the responsible CSA official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(8) The responsible CSA official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (c)(2) and (3) of this section as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible CSA official concludes that the grantee has failed to show cause why the grant should not be suspended, he may suspend the grant in whole or in part and under such terms and conditions as he shall specify.

(9) Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1050.115-8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(10) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible CSA official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency.

NOTE: Willful misapplication of funds may violate section 627 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971(f) or other criminal statutes.

(11) The responsible CSA official may in his discretion modify the terms, condition and nature of the sus-



pension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may in the discretion of the responsible CSA official be reimposed with or without further proceedings: Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1050.115-8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(d) *Summary suspension.* (1) As stated in (a)(3) of this section the responsible CSA official may invoke summary suspension procedures only if he determines that an emergency situation exists because there is a serious risk of: (i) Substantial injury to or loss of project funds or property, or (ii) violation of a Federal, State or local criminal statute, or (iii) violation of section 603(b) or 613 of the Economic Opportunity Act of 1964, as amended or of CSA Instructions implementing these sections of the Act. He must also determine that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the grantee by letter or by telegram, shall become effective upon delivery to the grantee, and shall specifically advise the grantee of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the grantee to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new ex-

penditures. However, funds shall not be recognized as committed by a grantee solely because the grantee obligated them by contract or otherwise to a delegate agency.

(3) In the notice of summary suspension the responsible CSA official shall advise the grantee that it may request CSA to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the grantee requests such an opportunity, the responsible CSA official shall immediately inform the grantee in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the grantee hold an informal meeting at which the grantee may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible CSA official may proceed to initiate termination proceedings at any time even though the grant has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible CSA official shall nevertheless afford the grantee, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Notices of summary suspension shall also be furnished by the responsible CSA official and by the grantee to delegate agencies in the same manner as notices of intent to suspend as set forth in paragraphs (c) (5), (6), and (7) of this section. Delegate agencies shall have the same right to submit written material to the responsible CSA official or to participate in the informal meetings as in the case of intended suspension proceedings set forth in paragraphs (c) (5) and (6) of this section.

(5) The effective period of a summary suspension may not exceed 10 days unless termination proceedings are initiated in accordance with § 1050.115-8 or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the grantee in accordance with paragraph (d)(3) of this section requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the grantee requests an opportunity to show cause why a summary suspension action should be rescinded the suspension shall continue in effect until the grantee has been afforded such opportunity and a decision has been made. Such a decision will be made within 5 days after the conclusion of the informal meeting referred to in paragraph (d)(3) of this section. If the responsible CSA official concludes after considering all material submitted to him, that the grantee has failed to show cause why the suspension should be rescinded, the responsible CSA official may continue the suspension in effect for an additional 10 days: *Provided, however*, That if termination proceedings are initiated, the summary suspension shall remain in full force and effect until all termination proceedings have been fully concluded.

(e) *Right to counsel; travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in an informal meeting pursuant to paragraphs (d) and (e) of this section do not have an attorney acting in that capacity as a regular member of the staff of the organization, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney. However, such fees shall not exceed \$100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government Travel Regulations and 45 CFR 1069.3-1, 1069.3-6 (CSA Instruction 6910-1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to paragraph (d) and (e) of this section

will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in 45 CFR 1069.3-1 to 1069.3-6 (CSA Instruction 6910-1a).

**§ 1050.115-8 CSA implementing policies and procedures governing termination of assistance.**

(a) *Purpose and scope.* (1) This section establishes rules for the termination of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be terminated for failure to comply with the terms and conditions of its grant, including applicable Laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR Part 1010 (CSA Instruction 6004-01a) shall apply.

(3) Pursuant to section 604(3) of the Act and CSA Instruction 6800-13, the responsible CSA official may terminate a grant under the circumstances outlined in paragraph (a)(1) of this section.

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question.

(2) The term "party" means CSA, the grantee concerned, and any other agency or organization which, by right or by permission of the presiding officer, is a participant in a termination hearing.

(c) *Notice and pre-hearing procedures.* (1) If the responsible CSA official believes a grantee's violation of the terms and conditions of its grant is

sufficiently serious to warrant termination, whether or not the grant has been suspended, he shall state that there appear to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place, in accordance with paragraph (d) of this section. In the alternative the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the grantee may request such a hearing. (If the grant is Regionally administered, the Regional Director of the grantee's Region may initiate the notice of intent to terminate on behalf of CSA. Any notice initiated by the Regional Director shall inform the grantee of the name and address of the responsible CSA official and shall direct the grantee to address all communications concerning the termination hearing to that official.)

(2) Termination hearings shall be conducted in accordance with the provisions of paragraph (e) and (f) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has requested such a hearing. Consideration shall be given to a request by a grantee to advance or postpone the date of a hearing scheduled by CSA. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements specified in paragraph (a) of this section. In any termination hearing, CSA shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement specified in paragraph (a) of this section, the grantee shall have the burden of proving that such action was timely taken.

(3) If a grantee requests CSA to hold a hearing in accordance with paragraph (c)(1) of this section, it shall

send a copy of its request for such a hearing to all delegate agencies which would be financially affected by termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to CSA. The grantee shall promptly send CSA a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(4) If the responsible CSA official pursuant to paragraph (c)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall within 5 days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. The grantee shall send the responsible CSA official a list of all delegate agencies notified and the date of notification.

(5) If the responsible CSA official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with paragraph (e) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of CSA and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(6) The results of the proceeding and any measure taken thereafter by CSA pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(7) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible CSA official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to



appear at a hearing for which a date has been set, unless excused for good cause shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of CSA.

(8) The responsible CSA official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(d) *Time and place of termination hearings.* The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible CSA official, unless he determines that the convenience of CSA or of the parties or their representatives requires that another place be selected.

(e) *Termination hearing procedures—(1) General.* The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraphs (e), (f), and (g) of this section.

(2) *Presiding officer.* (i) The presiding officer at the hearing shall be the responsible CSA official or, at the discretion of the responsible CSA official an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(ii) After the notice described in paragraph (e)(6) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of CSA or the appropriate Re-

gional Counsel: *Provided*, That the attorney designated to assist him has not represented CSA or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(3) *Presentation of evidence.* Both CSA and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (e)(6) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(4) *Participation.* (i) In addition to CSA, the grantee, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material. (ii) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments. (iii) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the grantee, and CSA, and, in the case of denial, a brief statement of the reasons therefor: *Provided however*, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the

issues as to which participation is permitted. (iv) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(5) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(6) *Notice.* The responsible CSA official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the CSA requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(7) *Notice of intention to appear.* The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to CSA of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(8) *Form and date of service.* All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: Provided however, that the effective date of the notice that there appear grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of CSA.

(9) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (e)(2)(ii) of

this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(10) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(11) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(12) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of CSA. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(13) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of paragraph (f)(1) of this section.

(f) *Decisions, termination notices, and review by the director.* (1) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to paragraph (e)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the grantee has failed to comply.

(2) The decision of the presiding officer may provide for continued suspension or termination of the grant in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(3) If the hearing is held by an independent hearing examiner rather than by the responsible CSA official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible CSA official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible CSA official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own decision thereon, including the reasons therefor. The decision of the responsible CSA official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding of-

ficer for further hearing or consideration.

(4) Whenever a hearing is waived, a decision shall be made by the responsible CSA official and a written copy of the final decision of the responsible CSA official shall be given to the grantee.

(5) The grantee may request the Director to review a final decision by the responsible CSA official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible CSA official or remand the matter to the responsible CSA official for further hearing or consideration. The decision of the responsible CSA official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his designee, the grant shall remain suspended under the terms and the conditions specified by the responsible CSA official, unless the responsible CSA official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the grantee's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

(g) *Right to counsel: Travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in a termination hearing pursuant to paragraph (c) of this section do not have an attorney acting in that capacity as a reg-



ular member of the staff of the organization, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and to transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Travel Regulation and in 45 CFR 1069.3-1 to 3-6 (CSA Instruction 6910-1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in a termination hearing pursuant to paragraph (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Regulations and in 45 CFR 1069.3-1 to 1069.3-6 (CSA Instruction 6910-1a).

(h) *Modification of procedures by consent.* The responsible CSA official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant to paragraph (c)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript.

(i) *Other remedies.* The procedures established by this section shall not preclude CSA from pursuing other remedies authorized by law.

(j) *Consequences of termination.* Upon termination, the disposition of unexpected Federal funds and of property purchased with program funds shall be according to the provisions of CSA Instruction 6800-12, Grant Clo-

seout Procedures. Termination shall not affect expenditures or legally binding commitments made prior to the grantee's receipt of notice of the termination, provided such expenditures were made in good faith and are otherwise allowable. Funds shall not be considered to be legally committed solely by virtue of a grantee's contract or other commitment to a delegate agency.

#### **Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (CSA Instruction 6800-14)**

##### **§ 1050.120 References.**

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment M).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment M).

(3) CSA Instruction 6710-3a, Project Review and Notification System. (45 CFR 1067.10.)

(4) OEO Instruction 6710-1, Applying for a CAP Grant and Changes thereto.

(5) CSA Instruction 6710-6, Applying for a Grant Under Title VII of the Community Services Act. (45 CFR 1067.15.)

(6) CSA Instruction 6143-1a, Emergency Energy Conservation Program. (45 CFR 1061.30.)

(7) OEO Instruction 7570-1, Applying for a new Research or Demonstration Grant Under EOA.

(8) OEO Instruction 7570-2, Applying for Continuation of a Research or Demonstration Grant.

##### **§ 1050.121 Standards.**

(a) Standard Form 424 will be used by public agencies and private organizations as a face sheet for applications when applying for any CSA grant.

(b) The SF-424 will be used to fulfill the requirements of OMB Circular A-95 for a notification of intent from applicant to clearinghouse(s) that assistance will be applied for from CSA in those instances where clearinghouses do not require other forms.

(c) The SF 424 will also be used by CSA funding offices to report to the clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95, and to notify States of

grants-in-aid awarded in accordance with Treasury Circular 1082.

**§ 1050.122 CSA implementing policies and procedures.**

(a) Detailed CSA policies regarding the uses of the SF 424, including information on completing the form, will be found in reference (3).

(b) Detailed policies and procedures for applying for grants under the Economic Opportunity Act will be found in references (4) through (8).

**Subpart 0—Property Management Standards**

SOURCE: 45 FR 8299, Feb. 7, 1980, unless otherwise noted.

**§ 1050.130-1 Applicability.**

This subpart applies to all grants, delegate agency agreements, and other agreements to public and private organizations/agencies under the Economic Opportunity Act of 1964, as amended, when such assistance is administered by the Community Services Administration.

**§ 1050.130-2 References.**

(a) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(b) OMB Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

(c) Pub. L. 94-519, Disposal of Excess and Surplus Federal Property, 90 Stat. 2456, 40 U.S.C. 483c.

(d) 45 CFR 1067.5, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII.

**§ 1050.130-3 Purpose.**

This subpart sets forth the standards governing management of property acquired with funds awarded by the Community Services Administration or cost of which was charged to a project supported by CSA grant or other agreement. The grantee may use its own property management standard procedures provided it observes the provisions of this subpart.

**§ 1050.130-4 Definitions.**

(a) *Real property.* Real property means land, including land and improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(b) *Personal property.* Personal property means any kind except real property. It may be tangible-having physical existence, or intangible having no physical existence, such as patents, inventions and copyrights.

(c) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit except that grantees subject to Cost Accounting Standards Board regulations may use the CASB standard or \$500 per unit and useful life of two years. A grantee may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

(d) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

(e) *Excess property.* Excess property means property under the control of any Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(f) *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included unless it is contrary to the grantee's established accounting practices.

(g) *Exempt property.* Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the grantee without further obliga-

tion to the Federal Government except as provided in § 1050.130-8a. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Community Services Administration with adequate authority.

**§ 1050.130-5 Standard—real property.**

(a) Title to real property shall vest in the grantee subject to the condition that the grantee shall use the real property for the authorized purpose of the project as long as it is required.

(b) The grantee shall obtain approval by the Community Services Administration for the use of real property in other projects when the grantee determines that the property is no longer required for the purpose of the original grant. Use in other projects shall be limited to those under other federally sponsored projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by the Community Services Administration.

(c) When the real property is no longer needed as provided in § 1050.130-5 (a) and (b) the grantee shall request disposition instructions from the appropriate administering office of the Community Services Administration. CSA shall apply the following rules in its disposition instructions:

(1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of property.

(2) The grantee may be directed to sell the property under guidelines provided by the Community Services Administration and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds).

(3) When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the

extent practicable and result in the highest possible return.

(4) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program, or project to the current fair market value of the property.

**§ 1050.130-6 Standard—federally owned nonexpendable personal property.**

(a) Title to federally-owned personal property remains vested in the Federal Government. Grantees shall submit an annual inventory listing of federally-owned property in their custody to the appropriate CSA Property Administrator. When the grant is completed, or when the property is no longer required, the grantee shall report the property to the appropriate CSA Property Administrator for further utilization or disposition.

(b) If CSA has no further need for the property it shall be declared excess and reported to the General Services Administration. Disposition instructions will be issued to the grantee after review by the appropriate CSA Property Administrator.

**§ 1050.130-7 Standard—exempt property.**

(a) When statutory authority exists, (e.g. Pub. L. 95-224, 41 U.S.C. 506b) title to nonexpendable personal property acquired with project funds, shall be vested in the grantee upon acquisition unless it is determined that to do so is not in compliance with the objectives of the Community Services Administration.

(b) When title is vested in the grantee, the grantee shall have no other obligation or accountability to the Federal Government for its use or disposition. The provisions of § 1050.130-8(a)(1) apply.

[45 FR 53155, Aug. 11, 1980]

**§ 1050.130-8 Standard—other nonexpendable property.**

(a) When other nonexpendable tangible personal property is acquired by a grantee with project funds, title shall not be taken by the Federal Gov-



ernment but shall vest in the grantee, subject to the following conditions:

(1) *Right to transfer title:* For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, CSA reserves the right to transfer the title to the Federal Government or a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following conditions:

(i) The property shall be appropriately identified in the grant or other agreement or otherwise made known to the grantee in writing.

(ii) The appropriate CSA Property Administrator shall issue disposition instructions to grantees within 120 calendar days after the end of the grant for which it was acquired. If disposition instructions are not issued within the 120 calendar day period, the grantee shall apply the standards of § 1050.130-8 (b) and (c) as appropriate.

(iii) When CSA exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in § 1050.130-6.

(iv) When title is transferred either to the Community Services Administration or to a third party, the provisions of § 1050.130-8(c)(2)(B) below should be followed.

(b) *Use of other tangible nonexpendable property for which the Grantee has title.* (1) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities in the following priority:

(i) Activities sponsored by the Community Services Administration.

(ii) Activities sponsored by other Federal Agencies.

(2) *Shared use.* During the time that nonexempt nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if

such other use will not interfere with the work on the project or program for which the property was originally acquired.

(i) First preference for such other use shall be given to other projects or programs sponsored by the Community Services Administration.

(ii) Second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Community Services Administration. User charges should be considered if appropriate.

(c) *Disposition of other nonexpendable property.* When a grantee no longer needs the property as provided in § 1060.130-8(b), the property may be used for other activities in accordance with the following conditions:

(1) *Nonexpendable property with a unit acquisition cost of less than \$1,000.00.* The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) *Nonexpendable personal property with a unit acquisition cost of \$1,000.00 or more.* (i) The grantee may retain the property for other uses provided that compensation is made to the Community Services Administration. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the appropriate CSA Property Administrator.

(ii) The Community Services Administration shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported to the General Services Administration by CSA to determine whether a requirement for the property exists in other Federal agencies. The Community Services Administration

shall issue instructions to the grantee no later than 120 days after the grantee's request. The following procedures shall govern disposition under this paragraph (c)(2)(ii) and the preceding paragraph (c)(2)(i):

(A) If instructed, or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Community Services Administration in an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. The grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater for the grantee's selling and handling expenses.

(B) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the Federal agency which receives the property an amount which is computed by applying the percentage of the grantee's participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(C) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Community Services Administration for such costs incurred in its disposition.

(d) *Property management standards for nonexpendable property.* The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the grantee or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage of CSA participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates CSA for its share.

(2) Property owned by CSA must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the appropriate CSA Property Administrator.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

[45 FR 8299, Feb. 7, 1980; 45 FR 25064, Apr. 14, 1980; 45 FR 53156, Aug. 11, 1980]

#### § 1050.130-9 Standard—expendable personal property.

Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding \$1,000.00 in total aggregate fair market value, upon termination or

completion of the grant other agreement, and the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use in nonfederally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as non-expendable personal property.

§ 1050.130-10 Standard—intangible property.

(a) *Inventions and patents.* If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to CSA. Unless there is a prior agreement between the grantee and CSA on disposition of such items, CSA shall determine whether protection on the invention or discovery shall be sought. CSA will also determine how the rights in the invention or discovery including rights under any patent in the invention or discovery including right or issued thereon—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (The President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

(b) *Copyrights.* Except as otherwise provided in the terms and conditions of the agreement, the author or the grantee is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but CSA shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

§ 1050.130-11 Property acquisition.

(a) *Acquisition policy and authorization—*(1) *Excess Government Property.* (i) 40 U.S.C. 483c provides that grantees may be authorized to acquire excess government property provided, that an amount equal to twenty-five percent of the original cost of the

excess property be paid to the U. S. Treasury by CSA.

(ii) In order to acquire excess property the grantee must pay, by certified check or money order, an amount equal to twenty-five percent of the acquisition cost of the items received, made payable to the Community Services Administration. The check or money order must accompany the SF 122, Transfer Order Excess Personal Property.

(iii) The appropriate CSA Property Administrator must review and certify all Standard Form 122s and hold acquisition payment until property is received by the grantee. The grantee receiving property must notify the Property Administrator that the property has been received. The receipts and a signed copy of the SF 122 will then be transmitted to the Chief, Finance and Grants Management Division, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506. The Finance and Grants Division will make payment to the Treasurer of the United States.

(iv) Title to excess property shall rest in the grantee.

(b) *Surplus Government Property.* 40 U.S.C. 484 also provides for donation of surplus property within the State.

(1) To any public agency for use in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety. As used in this subpart the term "public agency" means any state political subdivision thereof including any unit of local government or economic development district or any department, agency, instrumentality thereof, including instrumentalities created by compact or other agreement between states or political subdivisions or any Indian tribe, band, group pueblo, or community located on a State reservation. Also the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, Guam and American Samoa, or

(2) To nonprofit education or public health, institutions or organizations, i.e., medical institutions, hospitals, clinics, health centers, schools, col-



leges, universities, schools for the mentally retarded, schools for the physically handicapped, child care center, radio and television stations, museums attended by the public, and libraries serving free all residents of a community district, state, or region which are exempt from taxation under section 501 of the Internal Revenue Code of 1964, for purposes of education or public health (including research for any such purpose).

(c) *Authorization*—(1) *GSA excess property*. (i) Upon funding of certain grants determined to be eligible for excess property, the appropriate CSA Property Administering office will issue the grantee a letter of authorization to obtain GSA excess property. A Screener's Identification Card, (GSA Form 2946) will also be issued to qualified non-Federal agency screeners grantee representatives to screen and select excess property. The Property Administrator will issue the Screener's Identification Card and will inform the screeners in its use. The Screening Card is valid only for the funding period of the grant and must be renewed if and whenever the grant is renewed.

(ii) A record of certified screeners must be maintained by the Property Administrator and the GSA Regional Office kept informed of the changes.

(iii) When the services of an approved non-Federal agency screener are discontinued, the Property Administrator will recover the GSA Form 2946 and forward it to the validating GSA Regional Office for cancellation.

(2) *Surplus property*. The grantee should contact the representative of the State Agency for surplus property in its state for eligibility application. The Property Administrator in the appropriate CSA administering office will assist. The State Agency for surplus property may assess a service charge for its assistance in acquiring surplus property. Grantees may use CSA grant funds to pay the service charge for surplus property only if it is for use in a CSA-funded program. Surplus property acquired through the state will be accounted for on the grantee's inventory records for CSA property.

(3) The appropriate CSA property Administrator will approve only those requests for excess government property (SF 122) which represents requirements for CSA-funded programs. Requests for property required in conjunction with other Federal or State agency programs will be returned without action.

[45 FR 8299, Feb. 7, 1980; 45 FR 25065, Apr. 14, 1980; 45 FR 53156, Aug. 11, 1980]

### Subpart P—Procurement Standards

SOURCE: 45 FR 28137, Apr. 28, 1980, unless otherwise noted.

#### § 1050.160-1 Applicability.

This subpart applies to all grants, delegate agency agreements, and other agreements to public and private organizations/agencies under Titles II, IV, and VII of the Economic Opportunity Act of 1964, as amended, when such assistance is administered by the Community Services Administration.

#### § 1050.160-2 References.

(a) OMB Circular A-110, Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(b) Federal Management Circular 74-7 or OMB Circular A-102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments.

(c) 45 CFR Part 1050—Subpart 0, Property Management Standards (CSA Instruction 6800-15).

(d) Section 213 of the Economic Opportunity Act of 1964, as amended.

(e) Section 626 of the Economic Opportunity Act of 1964, as amended.

#### § 1050.160-3 Definition.

*Procuring Party*. The procuring party as used in this subpart means the grantee or the delegate agency, whichever is making a procurement.

#### § 1050.160-4 Purpose.

The purpose of this subpart is to provide standards for use by grantees and delegate agencies in establishing procedures for the procurement of supplies, equipment, construction and

other services, including consultant services, with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders.

**§ 1050.160-5 General responsibilities and procedures.**

(a) A procuring party may use its own procurement procedures provided that the procurements for Federal Assistance Programs conform to the standards set forth in this regulation.

(b) These standards contained in this subpart do not relieve the procuring party of the contractual responsibilities arising under its contracts. The procuring party is the responsible authority, without recourse to CSA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant or other agreements. This includes disputes, claims, protests of award, source evaluation of other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) Section 626(a) of the Economic Opportunity Act as amended, states that, "Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any agency, receiving financial assistance under this Act embezzles, willfully misapplies, steals, or obtains by fraud any of the monies, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to this Act, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; but if the amount so embezzled, misapplied, stolen or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year or both".

**§ 1050.160-6 Standard—code of conduct.**

(a) The procuring party shall maintain a code of conduct that shall govern the performance of its board members, employees, and agents engaged in awarding and administering

contracts using Federal funds. The code shall provide for disciplinary actions to be applied for violations of the code.

(b) No employee, officer or agent of the procuring party shall participate in the selection or in the award or administration of a contract supported by CSA funds where to his knowledge he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment.

(1) The term "immediate family" includes husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law.

(2) The term "financial or other interest" includes but is not limited to:

(i) Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.

(ii) Any of the following interests in the business with which the procuring party is contracting: Ownership; partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in a managerial capacity; or membership on the board of directors or governing body.

(c) The board members, employees, or agents of the procuring party shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements.

**§ 1050.160-7 Standard—open competition.**

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) The procuring party should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Examples of what is considered to be restrictive of competition include, but are not limited to: (1)

Placing unreasonable requirements on firms in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids and/or a request for proposals for a particular procurement by a nongovernmental procuring party should be excluded from competing for that procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offeree must fulfill in order for the bid/offer to be evaluated.

(1) Awards shall be made to the responsible bidder/offeree whose bid/offer is responsive to the solicitation and is most advantageous to the procuring party, price and other factors considered

(2) Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the procuring party's interest to do so and, in the case of governmental procuring parties, such rejections are in accordance with government's applicable law, rules, or regulations.

#### § 1050.160-8 Standard—procedures.

The procuring party shall establish written procurement procedures which provide for, at a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement. To foster greater economy and efficiency public grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive pro-

curements, contain features which unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerees shall be clearly specified.

(c) The following affirmative steps shall be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction, and services. These steps include:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps listed above.

(d) The procuring party shall take similar appropriate affirmative action in support of women's business enterprises.

(e) The procuring party is encouraged to procure goods and services from labor surplus areas.

(f) The type of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the procuring party but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" and percentage of



construction cost methods of contracting shall not be used.

(g) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(h) Any proposed sole source contract, or proposed contract where only one bid or proposal is received by a nongovernmental procuring party, shall be subject to prior approval by the appropriate CSA administering office if the aggregate expenditure for all items procured from the contractor will exceed \$5,000 in a 12-month period. In addition, for any procurement contract in which payment will be made by the procuring party in whole or in part with Title II grant funds, if the proposed contractor does the major part of its business with the procuring party and/or if the proposed contractor is a firm established or controlled by a member or members of the procuring party's staff or board, CSA approval will be based on, but not be limited to, the following:

(1) Evidence that the proposed contractor is a non-profit corporation whose income and assets would, in event of failure of the procuring party, continue to be used to benefit low-income individuals;

(2) Evidence that the hiring and procurement policies of the proposed contractor include the same prohibitions against nepotism and conflict of interest as those found in 160-6 of this subpart;

(3) Inclusion in the contract of a provision that the management, financial, and procurement records of the proposed contractor must be made available for inspection and examination to those parties and on the same basis as required for private nonprofit grantees in Subpart D of this Part;

(4) Submission by the proposed contractor of an audited revenue and expenditures statement and balance sheet dated within the last twelve months; and

(5) Submission of supporting documentation that the prices being charged are competitive with prices being charged for similar items and/or services by other businesses.

(i) Any proposed sole source contract, or proposed contract where only one bid or proposal is received by a governmental procuring party shall be subject to prior approval by the CSA administering office if the procurement is expected to exceed \$10,000. For governmental entities prior approval also is required if the procurement is expected to exceed \$10,000 and specifies a brand name product or the procuring party's procedures or operation fails to comply with one or more significant aspects of this rule. If the latter situation exists the CSA administering office will notify the grantee in writing with a copy to the Office of Federal Procurement policy.

(j) The procuring party should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indices together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability. Costs or prices based on estimated costs for contracts shall be allowed only to the extent that cost incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(k) Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

(l) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

[45 FR 28137, Aug. 28, 1980, as amended at 45 FR 59153, Sept. 8, 1980]

**§ 1050.160-9 Method of procurement for State and local governments.**

Procurement under grants shall be made by one of the following methods: Small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; and/or non-competitive negotiation.

(a) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Grantees shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

(b) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(i) A complete, adequate and realistic specification or purchase description is available.

(ii) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(iii) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant, the following requirements shall apply.

(i) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attach-

ments, shall clearly define items or services needed in order for the bidders to properly respond to the invitation.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(v) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

(c) In competitive negotiation, proposals are requested from a number of sources and the request for proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposal shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The request for proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will

be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

(d) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is feasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After solicitation of a number of sources, competition is determined inadequate.

(e) Additional innovative procurement methods may be used by grantees with the approval of the appropriate CSA administering office.

§ 1050.160-10 Standard—contract provisions.

The requirements relate to provisions that must be included in contracts for procurements that are subject to this regulation. The term "contracts" in this section shall be construed as including subcontracts.

(a) *Administrative Remedies for Violations.* Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide

for such remedial actions as appropriate.

(b) *Termination Provisions.* Contracts in excess of \$10,000 shall contain suitable provisions for termination by the procuring party, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) *Bonding Requirements.* In all contracts for construction or facility improvement awarded by a nongovernmental procuring part (A-110 only) for more than \$100,000, the recipient shall observe the bonding requirements provided for in 45 CFR Part 1050, Subpart C.

(d) *Executive Order 11246.* All contracts in excess of \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

(e) *Davis-Bacon Act.* All construction contracts in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon acceptance of the wage determination. All suspected or reported violations shall be reported to CSA by the grantee.

(f) *Copeland Act.* All contracts or subcontracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the



Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. All suspected or reported violations shall be reported to CSA by the grantee.

(g) *Contract Work Hours and Safety Standards Act.* All contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard workweek of 40 hours. Work in excess of the standard work day or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(h) *Inventions and Patents.* Contracts or subcontracts which may give rise to inventions or patents shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regula-

tions issued by CSA and the grantee. The contractor shall be advised as to the source of additional information regarding these matters.

(i) *Access to Records.* All negotiated contracts (except those of \$10,000 or less) awarded by a nongovernmental procuring party and all negotiated contracts (except those awarded by small purchases procedures) which are made by a public procuring party, shall include a provision to the effect that the procuring party, the Community Services Administration, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(j) *Clean Air Act.* Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision that requires the procuring party to agree to comply with all applicable standards, order or regulations, issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Community Services Administration and the U.S. Environmental Protection Agency Assistant Administrator for Enforcement.

(k) *Energy Conservation Act.* Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-165).

## **PART 1060—GENERAL CHARACTERISTICS OF CSA-FUNDED PROGRAMS**

### **Subpart 1060.1—Participation of the Poor in the Planning, Conduct, and Evaluation of Community Action Programs (CSA Instruction 6005-1)**

#### **Sec.**

1060.1-1 Applicability of this subpart.

1060.1-2 Policy.

1060.1-3 Procedures.

## § 1060.1-1

## Title 45—Public Welfare

### **Subpart 1060.2—CSA Income Poverty Guidelines (CSA Instruction 6004-1K)**

Sec.

1060.2-1 Applicability.

1060.2-2 Policy.

### **Subpart 1060.3—Limitation on Benefits to Those Voluntarily Poor (CSA Instruction 6004-2)**

1060.3-1 Applicability of this subpart.

1060.3-2 Policy.

### **Subpart 1060.1—Participation of the Poor in the Planning, Conduct, and Evaluation of Community Action Programs (CSA Instruction 6005-1)**

**AUTHORITY:** Secs. 211, 224, 602, 81 Stat. 693; 42 U.S.C. 2791.

**SOURCE:** 33 FR 17140, Nov. 19, 1968, unless otherwise noted.

#### **§ 1060.1-1 Applicability of this subpart.**

This subpart applies to all Community Action Agencies, Limited Purpose Agencies, and State Economic Opportunity Offices assisted by OEO under Title II and III of the Economic Opportunity Act of 1964, as amended.

#### **§ 1060.1-2 Policy.**

(a) *General.* (1) An essential objective of community action is extensive and intensive participation by the poor and residents of poverty areas in the planning, conduct, and evaluation of programs which affect their lives.

(2) Without the steady growth of such participation in both quantity and quality, community action cannot succeed. The constituency of the Community Action Program and its grantees is poor people.

(3) The Community Action Program is based upon the recognition that poor people possess talents and resources essential to reducing the problems of poverty. They often have unique insight into their own problems and valuable knowledge about the effect on their own lives of the programs designed for their benefit. Their participation in the development of those programs is essential to building understanding and the will of the entire community to bring an end

to poverty and to achieve effective communication between the poor and the nonpoor. Far more relevant, sensitive, and effective programs and plans will come out of their participation.

(4) In its provisions regarding participation by the poor, the Economic Opportunity Act as amended in 1967 clearly recognizes that successful community action must help enlist and assure effective use of these resources of the poor. It gives more specific form to the often expressed aim of community action to help the poor help themselves. Through the formation of their own organizations, they can effectively speak directly for their interests and views within their immediate areas and within the broader community and work together to solve their problems. The EOA authorizes assistance to those programs which will aid the poor to participate more fully in the affairs of their communities.

(5) OEO vigorously supports the emphasis of the Economic Opportunity Act on participation of the poor and requires meaningful participation in all programs funded with community action monies. It will offer this support through:

(i) The funding of grantees who are carrying out the purposes of this subpart and the provision of frequent review to see that direct involvement of poor people is maintained and increasing;

(ii) The requirement that all funding applications must explicitly indicate a course of action which will lead to improvement in the involvement of poor people in the community action agency (CAA) program;

(iii) Policy, guidance, training and technical assistance to help grantees to effectively involve poor people;

(iv) Direct efforts to encourage other agencies, organizations and groups at the national, state and local levels to adopt strong participation of the poor policies for programs affecting poor people.

(6) To encourage and support effective participation by the poor, in keeping with the CAP mission and objectives, OEO has established the following minimum requirements for community action grantees. These are minimum requirements. OEO will con-

tinue to do everything it can to assist grantees in their local efforts to exceed these basic requirements. The quality of participation, not the quantity, and continuing improvement are the common goals of OEO and its community action grantees. Mere gestures or empty ritual are no substitute.

(b) *Community action agencies*—(1) *Basic responsibilities.* Every CAA has a fundamental responsibility to encourage, assist, and strengthen the ability of the poor in the areas served by the CAA to play major roles in the organization; program planning; goal setting; determination of priorities; decisions concerning budgeting and financial management; key decisions concerning hiring of personnel, selection criteria, personnel policies, the number and type of non-professional jobs, training, and career development programs; and evaluation of programs affecting their lives. Decisions affecting organization can include what policymaking boards and committees are established and what their roles are in respect to each other, to paid staff, and to any delegate agency staff and boards; which programs will be delegated; and which staff unit or other group will have administrative responsibility for which programs. The fundamental responsibility of the CAA includes:

(i) Seeking and bringing about ways to improve its own effectiveness as a channel through which the poor, local government and private groups can communicate, plan, and act together in partnership. In such a partnership the poor must have a strong voice or role, both directly and through representatives whom they have chosen.

(ii) Providing the representatives of the poor with the tools and the support (guidance, training, and staff assistance) which will permit them to participate meaningfully in the affairs of the CAA, and in all of its programs and delegate agencies.

(iii) Encouraging the development of effective local organizations established and controlled by residents of poverty neighborhoods or areas. Community action agencies are expected to provide training, technical assistance and staff resources to enable the poor

to develop, administer, and participate effectively in local area programs and to enter into the broader community discussion of poverty problems and solutions.

(iv) Providing employment for poor persons in all phases of the community action program.

(v) Continually insuring that delegate agencies involve poor persons in the planning, conduct and evaluation of delegated programs.

(vi) Working for the acceptance by other public and private agencies and organizations serving the community of effective and growing involvement of the poor in the planning, conduct and evaluation of all activities which affect them and their inclusion in career jobs in the agencies.

(2) *Representation and involvement on CAA Boards.* (i) Every CAA has the obligation to assure that at least one-third of the membership of the CAA governing or administering board are representatives of the poor and residents of the areas to be served by the CAA chosen in a democratic way. (Community Action Memo 81,<sup>1</sup> contained in the booklet "Organizing Communities for Action," sets forth on pp. 12-13 the policy for implementing this legislative requirement. The requirement that CAAs shall establish procedures in their bylaws, under which community agencies and representative groups of the poor which feel themselves inadequately represented on the CAA Board may petition for adequate representation, is spelled out on pp. 14-15.)

(ii) In addition to the provision for public board meetings publicized and conducted in accordance with OEO Instruction 7042-1,<sup>1</sup> the CAA is responsible for setting up the following procedures to make certain the representatives of the poor on the board are able to participate meaningfully:

(a) The proportion of democratically selected representatives of the poor on any executive committee and on all policy making committees and other subcommittees of the CAA shall fairly

<sup>1</sup>Not filed with the Office of the Federal Register.



reflect their proportion on the CAA Board itself;

(b) The time and place for any board, committee, advisory committee or neighborhood council meeting shall be so fixed as to insure that it will be possible and convenient for the representatives of the poor to attend;

(c) A quorum for any board or committee meeting shall be established and it shall be at least 50 percent of the membership of that board or committee;

(d) Proxy voting is prohibited;

(e) Advance notice of and the agenda (an outline of matters to be considered) for any board or committee meetings shall be provided individually to all members in writing 5 days before the meeting. In addition, notices should be given to the local public media and posted in all neighborhood or community centers along with the agenda;

(f) Written minutes which include a record of votes on all motions, shall be distributed to all board members before the next board meeting. In addition, statements or records of all actions taken at all board meetings (including the record of the vote of each member when a roll call vote has been taken) shall be made available to the public on request.

(g) In communities which include a non-English-speaking population advance notice, agendas, and minutes of meetings will be provided to any non-English-speaking representatives of that population in their own language, and there must be an interpreter available to them during the meetings;

(h) Funds for transportation, baby sitting and other legitimate expenses, as well as an allowance, should be provided by the CAA to enable representatives of the poor to participate regularly in board, committee, advisory council, or neighborhood council meetings. Statements of the expenses allowed and how representatives will be repaid for what they have spent will be drawn up by the CAA and given to the members of all CAA boards and advisory councils. (More detailed provisions for these reimbursements is spelled out in CA Memo

29A<sup>1</sup> OEO Instruction 6803-1, "Allowances and Reimbursements for Members of Policy-Making Bodies" is being developed to replace CA Memo 29A.<sup>1</sup>);

(i) Representatives of the poor on CAA Boards must be given adequate information and training about board functions, duties, and responsibilities and the issues which will come before the board, to permit them to make the fullest possible contribution to the work of the board. In this connection, the by-laws of the CAA shall be distributed and fully explained to the representatives of the poor on the board;

(j) Adequate information about standards of program effectiveness established by OEO and by the CAA shall be delivered when available to the representatives of the poor to permit them to plan for and evaluate CAA programs and to set priorities for the use of funds and other resources. Evaluations of CAA programs and their operation shall consider the views of representatives of the poor on the CAA Board, as well as the views of program participants and area residents;

(k) Representatives of the poor on CAA Boards will participate in the development of all parts of the CAA grant application, including "CAA Plans and Priorities," the work program, and the prereview meetings with the OEO Regional Office Field Representative.

(3) *Project Advisory Committees and neighborhood or Target Area Councils.*

(i) While OEO recognizes that unique conditions exist in different regions of the country and in rural and urban communities and that the means of participation of the poor may therefore legitimately differ, every CAA is nonetheless responsible for developing effective involvement of the poor in each major program and in each of its target areas. This involvement may be in the form of (a) a program advisory committee composed of at least 50 percent democratically selected representatives of the poor being served by

<sup>1</sup>Not filed with the Office of the Federal Register.

an individual program area (as required in the national emphasis programs such as Head Start, Legal Services, etc.) or (b) a neighborhood or target area based organization (such as a neighborhood or community council) made up of neighborhood residents. If these program advisory committees and neighborhood councils wish, they may:

(ii) Advise the CAA in setting annual program priorities based upon the top needs of the neighborhood or target area;

(iii) Participate in the development of the pertinent parts of the Community Action Grant process;

(iv) More particularly, participate in the development of CAP Form 81, "Community Action Agency Plans and Priorities," (Applying for a CAP Grant-OEO Instruction 6710-1, pp. III 9-14) and CAP Form 7, "Program Account Work Program," (pp. 13-25) bearing on the program operating in their neighborhood or in the program area for which the advisory committee or neighborhood council is responsible. Such a committee or council shall add a written approval or dissent from the CAA's Plans and Priorities, CAP Form 81, when it is submitted to OEO by the CAA;

(v) Participate in the prereview meetings with the Regional Office Field Representative prior to the submission of the funding request

(vi) Review and comment on existing or proposed CAA projects, policies, and plans and on major OEO policy instructions sent to the CAA for comment;

(vii) Receive from the CAA copies of OEO publications, instructions, program guidance and operating handbooks;

(viii) Participate in evaluations of programs operated or delegated by the CAA and present their findings to the CAA Board for its consideration;

(ix) Review and comment on CAA self-evaluation reports, OEO on-site evaluation reports, audits, and studies or evaluations contracted privately by the CAA. Privacy of personnel matters should be protected by pulling out sensitive references rather than withholding the whole document from distribution;

(x) Have an influential voice (though not necessarily the once voice) in the approval of program staff working in their geographical area (i.e., neighborhood center directors in the case of neighborhood councils) or in the program for which they have responsibility (i.e., a Head Start Director in the case of a parent advisory committee), and have an influential voice in the development of personnel policies and standards for selection of other staff personnel;

(xi) Work toward an effective role (a) in the planning, coordination, conduct and evaluation of all related poverty programs supported by Federal, State or local funds operating in their area, and (b) in assuring that existing and proposed services in the neighborhoods and target areas are responsive and relevant to community problems and are fully adapted to neighborhood needs and conditions.

(4) *Neighborhood or Target Area Organizations.* (i) To strengthen the voice of poor people in the decisions which affect them and to increase the participation of poor people in the community action process, each CAA is expected to recognize or help establish target area or neighborhood-based organizations and to negotiate with them regarding their role in CAA-sponsored programs. The CAA must provide adequate support, guidance, training, and technical assistance to such organizations to help them become effective spokesmen and to attract additional resources from public and private sources. This assistance may include the provision of funds to permit the neighborhood or target area organization to hire their own expert assistance directly (lawyers, program specialist, planners, or trainers). With such support they can take part in community decisions affecting them on a basis of equality with those who are not poor.

(ii) These neighborhood or target area organizations must be (a) kept informed of all actions of the CAA or its delegate agencies which affect the neighborhood, and (b) given sufficient advance notice of CAA or delegate agency board meetings and the issues to be discussed to permit neighborhood or target area residents to con-

sider the choice and develop neighborhood proposals to present to the CAA.

(iii) In order to increase the capability of neighborhood or target area organizations, the CAA and neighborhood organizations should determine jointly the extent to which the neighborhood organizations will be delegated responsibility for the planning, funding, conduct or administration of program activities within the neighborhood or target area. Any such delegation should take account of the capability of the organization to perform the functions effectively.

(iv) Each CAA shall take every opportunity to assist the neighborhood or target area organizations in their efforts to improve existing service programs in the community and bring additional services within the reach of the poor. Whenever possible, the services can be made available through neighborhood or community centers planned and operated by neighborhood or target area boards or councils. The success of the CAA in this effort will be judged by the ability of neighborhood or target area groups to deal effectively with public and private agencies regarding the distribution and productive use of resources to meet the needs of area residents.

(v) A subcommittee on each CAA Board, including representatives of the poor, as well as qualified staff, should be assigned specific responsibilities to assure that the CAA is providing effective assistance and support to the development of neighborhood or target area organization capabilities.

(5) *Delegate agencies.* (i) When programs and funds are delegated by the CAA, the CAA shall require the same policies and procedures for participation of the poor as those established in this subpart for CAAs.

(ii) Delegate agencies established specifically to operate programs funded through the CAA (such as area or county policy boards or councils servicing an entire political subdivision) or whose primary responsibility is for programs sponsored by the CAA must have governing boards at least one-third of whose members are democratically selected representatives of the poor residing within that area. In the case of those area boards or coun-

cil which cover less than an entire political subdivision, at least a majority of its members must be representatives of the poor residing within the area. Target area or neighborhood based organizations or corporations may have boards composed solely of the democratically selected representatives of area residents, but in those cases where major policy or funding responsibilities are delegated, provision must be made for representation of elected public officials.

(iii) Delegate agencies whose primary responsibilities are for programs not sponsored by the CAA (such as school boards) must establish an advisory board or committee to assist in the planning, conduct, and evaluation of its community action programs. At least a majority of the membership of such boards must be democratically selected representatives of the poor served by the delegated community action program.

(c) *Limited purpose agencies.* Limited purposes agencies shall have either a governing body made up of one-third representatives of the poor or a policy advisory committee composed of at least 50 percent democratically selected representatives of the poor being served by the OEO-funded program. Limited purpose agencies shall take the initiative in developing measures to implement the same requirements described in this subpart for every CAA for the participation of the poor in the planning, conduct, and evaluation of OEO-funded programs. The burden of proof shall be on the limited purpose agency to document in writing if it is legally unable to abide by the standards of this subpart.

(d) *State Economic Opportunity Offices.* (i) In addition to assisting in the implementation of the general policy statement of this subpart, the State Economic Opportunity Office (SEOO) shall promote the maximum feasible participation of poor people in the planning, conduct and evaluation of other state agency operations and programs which affect the poor. The SEOO shall encourage and work toward the development of career opportunities for the poor within other state agencies.



(ii) State Economic Opportunity Offices, whenever possible and consistent with State laws and regulations, shall employ poor people as staff or as consultants to help carry out training and technical assistance functions to community action programs.

(iii) Each SEOO which operates OEO-funded statewide poverty programs shall establish an advisory committee of representatives of the poor. When the SEOO submits an application for the funding of a statewide program, it shall have established an advisory committee which shall have participated in planning the programs. A representative elected by the representatives of the poor of each CAA Board in the state shall serve as a member of the SEOO Advisory Committee. These SEOO Advisory Committees shall:

(a) Meet not less than four times a year;

(b) Participate in the development of policies and procedures for the statewide programs; review and comment on the programs; participate in evaluations; and present their findings to the SEOO for its consideration;

(c) Recommend to the SEOO the advisability of operating new statewide programs.

(iv) Funds for transportation, baby-sitting, and per diem to enable these representatives of the poor to participate regularly in advisory committee meetings shall be provided by the SEOO from OEO funds.

(e) *Participation through employment.* (i) Every grantee, including SEOOs which operate OEO-funded statewide poverty programs, and delegate agency must develop and include in their personnel policies specific plans to fill staff positions to the greatest extent possible with individuals who are poor. Such policies must emphasize opportunities for training and career advancement and for employment of poor people in staff positions which are directly involved in the planning, budgeting, funding, conduct, administration and evaluation of the programs.

(ii) These policies must provide for (a) the development of job and staffing requirements (by analyzing jobs to determine if a professional is needed

and by breaking down jobs in such a way to create "new careers") so as to maximize the number of nonprofessional positions; (b) the establishment of job qualifications based on the personal ability of an individual to perform, rather than on formal requirements of education and experience; (c) career development through increasing the amount of responsibility in the task performed so that poor persons employed by the CAA may have opportunities for advancement to the fullest extent of their abilities; and (d) continued on-the-job training and constructive supervision needed to permit advancement.

(iii) Every CAA further has the responsibility for developing career opportunities for the poor in other local agencies, both public and private.

(f) *Participation in evaluation.* Community Action Agencies, limited purpose agencies, and State Economic Opportunity Offices must obtain the views of program participants and area residents as well as the views of representatives of the poor on boards, committees and councils as part of their evaluation of grantee or delegate agency programs and operations.

#### § 1060.1-3 Procedures.

(a) *Compliance—(1) Grantee and delegate agency report.* Each grantee and delegate agency has a responsibility to implement the policies and standards of this subpart. Implementation of this subpart should be clearly reflected in the agency's planning, program development, and budgeting processes and should be evaluated in writing by the agency every year. A report of progress should accompany the refunding request as a part of the agency's self-evaluation. Such a progress report will include:

(i) A summary of policies and procedures established to carry out this subpart;

(ii) A description of progress in improving the quality of participation.

(2) *Participation of the poor in compliance.* (i) In addition, every grantee and delegate agency's annual self evaluation shall include a section prepared by the representatives of the poor on the CAA, delegate agency or limited

purpose agency Board, with the help of representatives of the poor on neighborhood, target area, or policy advisory boards, councils, and committees and of appropriate staff members. The representatives of the poor shall describe how the CAA, delegate agency, or limited purpose agency has:

(a) Provided opportunities for involvement of poor people in proposing, planning, approving, administering, operating and evaluating programs.

(b) Helped to develop the capacities of poor people to participate effectively. Special attention should be given to the amount of money and staff time devoted to training and technical assistance to increase and improve the involvement of poor people in the program.

(c) Responded to and supported the positions and requests of the poor and neighborhood groups regarding programs and issues which affect them.

(d) Promoted participation of the poor in the activities of other agencies and organizations in the community and in community-wide decision making.

(e) Development employment and career development opportunities for the poor.

(f) Worked toward increased control by the poor and target area residents over the economic life in their neighborhoods or areas.

(ii) This evaluation shall be given full consideration by the Board of the grantee and shall be submitted to the appropriate Regional Office of OEO with its CAP form 81. OEO will not approve an application for funding that does not explicitly indicate a course of action that will lead to improvement in the quality of involvement of poor people in its program.

(3) *State Economic Opportunity Office.* As part of its application for funding, each State Economic Opportunity Office shall submit to the appropriate regional office a written report which describes its implementation of this subpart.

(b) *Appeals.* (1) Petitions (signed by from 50 to 100 persons from community agencies or representatives groups of the poor, depending on the procedures established in the grantee's bylaws) claiming (i) inadequate repre-

sentation on grantee boards, (ii) inability to influence the character of programs, or (iii) grantee refusal to fund programs proposed by the poor, may be presented to the governing boards of grantee organizations.

(2) Such appeals must be considered by the governing body of the grantee organization at a public meeting publicized, conducted and recorded in accordance with OEO/CAP policies regarding public hearings. (Interim regulations covered in CA Memo 32<sup>1</sup> are being revised in OEO Instruction 7042-1 which will soon be distributed.)

(3) Notification of receipt of such petition must be sent within 5 days to the OEO Regional Office or Headquarters Office which is responsible for funding and monitoring the grantee. This should be followed by a statement of the action of the governing body on the petition and the reasons supporting the action.

(4) In addition to the above procedures, poor people, either as individuals or groups, are encouraged to continue to express themselves directly to OEO Regional Offices and Headquarters if they have complaints about the operation of OEO-funded programs.

#### **Subpart 1060.2—CSA Income Poverty Guidelines (CSA Instruction 6004-1K)**

##### **§ 1060.2-1 Applicability.**

This subpart applies to all grants financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)

[46 FR 15271, Mar. 5, 1981]

##### **§ 1060.2-2 Policy.**

(a) The attached income guidelines are to be used for all those CSA funded programs, whether administered by a grantee or delegate agency, which use CSA poverty income guidelines as admission standards. Any individual or family certified eligible for AFDC or SSI payments is automatically eligible for CSA program services without the need to be separately cer-

<sup>1</sup>Not filed with the Office of the Federal Register.

tified through the application of the attached income guidelines.

These guidelines do not supersede alternative standards of eligibility approved by CSA.

(b) The guidelines are also to be used in certain other instances where required by CSA as a definition of poverty, e.g., for purposes of data collection and for defining eligibility for allowances and reimbursements to board members. Agencies may wish to use these guidelines for other administrative and statistical purposes as appropriate.

(c) The attached guidelines are based upon Table 17 of the U.S. Bureau of the Census, *Current Population Reports*, Series P-60, No. 125, "Money Income and Poverty Status of Families and Persons in the United States: 1979" (Advance Report), U.S. Government Printing Office, Washington, D.C., October, 1980; and Department of Labor Press Release USDL 81-55 of January, 1981.

(d) The following definitions, from "Current Population Reports", P-60, No. 91, Bureau of the Census, December 1973 have been adopted by CSA for use with the attached poverty guidelines.

(1) *Income*. Refers to total cash receipts before taxes from all sources. These include money wages and salaries before any deductions, but not including food or rent in lieu of wages. These include receipts from self-employment or from own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, unemployment and workman's compensation, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car,

tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

(2) *A farm residence*. Is defined as any dwelling on a place of 10 acres or more with \$50 or more annual sales of farm products raised there; or any place less than 10 acres having product sales of \$250 or more.

#### POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

| Size of family unit | Nonfarm family | Farm family |
|---------------------|----------------|-------------|
| 1.....              | \$4,310        | \$3,680     |
| 2.....              | 5,690          | 4,850       |
| 3.....              | 7,070          | 6,020       |
| 4.....              | 8,450          | 7,190       |
| 5.....              | 9,830          | 8,360       |
| 6.....              | 11,210         | 9,530       |

For family units with more than 6 members, add \$1,380 for each additional member in a nonfarm family, and \$1,170 for each additional member in a farm family.

#### POVERTY GUIDELINES FOR ALASKA

| Size of family unit | Nonfarm family | Farm family |
|---------------------|----------------|-------------|
| 1.....              | \$5,410        | \$4,610     |
| 2.....              | 7,130          | 6,070       |
| 3.....              | 8,850          | 7,530       |
| 4.....              | 10,570         | 8,990       |
| 5.....              | 12,290         | 10,450      |
| 6.....              | 14,010         | 11,910      |

For family units with more than 6 members, add \$1,720 for each additional member in a nonfarm family, and \$1,460 for each additional member in a farm family.

#### POVERTY GUIDELINES FOR HAWAII

| Size of family unit | Nonfarm family | Farm family |
|---------------------|----------------|-------------|
| 1.....              | \$4,980        | \$4,250     |
| 2.....              | 6,560          | 5,590       |
| 3.....              | 8,140          | 6,930       |
| 4.....              | 9,720          | 8,270       |
| 5.....              | 11,300         | 9,610       |
| 6.....              | 12,880         | 10,950      |



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For family units with more than 6 members, add \$1,580 for each additional member in a nonfarm family, and \$1,340 for each additional member in a farm family.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)  
[46 FR 15271, Mar. 5, 1981]

### **Subpart 1060.3—Limitation on Benefits to Those Voluntarily Poor (CSA Instruction 6004-2)**

#### **§ 1060.3-1 Applicability of this subpart.**

This subpart applies to all agencies receiving funds under Titles I-D, II, and III-B of the Economic Opportunity Act for programs administered by OEO in which income criteria are used as admission standards (with the exception of Head Start and Upward Bound programs).

(Sec. 602, 78 Stat. 503; 42 U.S.C. 2942)  
[34 FR 2419, Feb. 20, 1969]

#### **§ 1060.3-2 Policy.**

(a) Section 611 of the Economic Opportunity Act provides as follows:

The Director shall take such action as may be necessary to assure that, in determining a person's eligibility for benefits under this Act on account of his poverty, such person will not be deemed to meet the poverty criteria if his lack of income results from his refusal, without good cause, to seek or accept employment commensurate with his health, age, education, and ability.

(b) Under section 611 of the Act, an individual should not be treated as meeting poverty criteria for project benefits if he is fully capable of supporting himself but deliberately chooses not to do so. For example, a person having the education and training to earn an income substantially above the poverty line should not be considered eligible under the poverty criteria if, without good cause, he chooses not to work. On the other hand, an individual should not be excluded from project benefits if his lack of motivation is the result of a back-

ground of poverty. Section 201 of the Economic Opportunity Act explicitly recognizes that one goal of community action is to strengthen motivation among low-income people.

(c) Determinations regarding an individual's eligibility for project benefits under this subpart should be made as part of the existing screening process for these programs. Special screening procedures should not be created. In making determinations, grantee and delegate agencies must be sure that a needy person is not disqualified because of failure to seek or accept employment in situations where:

(1) Age or ill health, mental or physical, interferes with his ability to accept employment.

(2) Family obligations, especially the care of small children, interfere with his ability to accept employment.

(3) Transportation is not available to the job in question, or travel time or cost to and from work is unreasonable.

(4) Acceptance of the employment in question would subject him to the work situation to discrimination on account of race, color, creed, sex, or national origin.

(5) The employment which was available would not have given him an income above the poverty line. Since he would, in any event, remain in the target population, he should be considered eligible for antipoverty programs. Appropriate consideration should be given to such factors as the regularity of intermittence of the employment over time, and to seasonal patterns in employment, in determining whether the job would result in a family income above the poverty line.

(6) The length of the work week or other conditions or employment are unreasonable.

(Sec. 602, 78 Stat. 503; 42 U.S.C. 2942)  
[34 FR 2419, Feb 20, 1969]

### **PART 1061—CHARACTER AND SCOPE OF SPECIFIC PROGRAMS**

#### **Subpart 1061.4—New Statement of CSA Policy on Family Planning (CSA Instruction 6130-01 and 6130-1)**

##### **Sec.**

- 1061.4-1 Applicability.
- 1061.4-2 Effective date.
- 1061.4-3 Purpose.
- 1061.4-4 Role of family planning in community action.
- 1061.4-5 Policy on family planning applications.
- 1061.4-6 Requirements.
- 1061.4-7 Required assurance.
- 1061.4-8 Revised grant condition.
- 1061.4-9 Effect on previously approved grants.

#### **APPENDIX A TO SUBPART 1061.4—NEW STATEMENT OF CSA POLICY ON FAMILY PLANNING. EXHIBITS I, II, III**

#### **Subpart 1061.20—Summer Youth Recreation Program (CSA Instruction 6168-2b)**

- 1061.20-1 Applicability.
- 1061.20-2 Definitions.
- 1061.20-3 Summer Youth Recreation Program—Description and components.
- 1061.20-4 Eligible sponsors/alternates.
- 1061.20-5 Eligible participants.
- 1061.20-6 Funding.
- 1061.20-7 Application process.
- 1061.20-8 Expenditures of funds.
- 1061.20-9 Coordination with other programs.
- 1061.20-10 General requirements.

#### **APPENDIX A—CSA REGIONAL OFFICES**

#### **APPENDIX B—STATE SCHOOL LUNCH DIRECTORS**

#### **Subpart 1061.30—Emergency Energy Conservation Program (CSA Instruction 6143-1a)**

- 1061.30-1 Applicability.
- 1061.30-2 Definitions.
- 1061.30-3 Background.
- 1061.30-4 Purpose.
- 1061.30-5 Introduction.
- 1061.30-6 Purpose of the Special Emphasis Program.
- 1061.30-7 Eligible participants.
- 1061.30-8 Eligible applicants.
- 1061.30-9 Eligible activities.
- 1061.30-10 Program policy.
- 1061.30-11 Funding.
- 1061.30-12 Application requirements.
- 1061.30-13 Reporting requirements.
- 1061.30-14 Additional requirements.

#### **Subpart 1061.31—Emergency Energy Conservation Program (CSA Instruction 6143-2)**

##### **Sec.**

- 1061.31-1 Applicability.
- 1061.31-2 Definitions.
- 1061.31-3 Purpose.
- 1061.31-4 Policy.
- 1061.31-5 General instructions.
- 1061.31-6 Detailed instructions for completing GSA Form 488 (EDF).

#### **Subpart 1061.50—Community Food and Nutrition Programs (CSA Instruction 6132-2a)**

- 1061.50-1 Applicability.
- 1061.50-2 Definitions.
- 1061.50-3 Purpose of the subpart.
- 1061.50-4 Introduction.
- 1061.50-5 Policy.
- 1061.50-6 Purposes of the program.
- 1061.50-7 Program categories.
- 1061.50-8 Eligible participants.
- 1061.50-9 Eligible applicants.
- 1061.50-10 Funding.
- 1061.50-11 Application procedures.
- 1061.50-12 Reporting requirements.
- 1061.50-13 Current fiscal year application and review information.

#### **APPENDIX A**

#### **APPENDIX B**

#### **APPENDIX C**

#### **APPENDIX D**

#### **APPENDIX E**

#### **APPENDIX F**

#### **APPENDIX G**

#### **APPENDIX H**

#### **Subpart 1061.51—Funding Requirements for Fiscal Year 1981 Crisis Intervention Program**

- 1061.51-1 Applicability.
- 1061.51-2 References.
- 1061.51-3 Definitions.
- 1061.51-4 Background.
- 1061.51-5 Purpose.
- 1061.51-6 Policy.
- 1061.51-7 Who can apply for funds?
- 1061.51-8 What can these funds be used for?
- 1061.51-9 Who can be served by this program?
- 1061.51-10 Level of assistance.
- 1061.51-11 How to obtain funds.
- 1061.51-12 Project requirements.
- 1061.51-13 Post funding requirements.
- 1061.51-14 Termination of program.

#### **APPENDIX A—NAMES AND ADDRESSES OF MIGRANT CONDUITS**

#### **APPENDIX B—CSA POVERTY INCOME GUIDELINES**

#### **APPENDIX C—CSA REGIONAL OFFICES**

#### **APPENDIX D—CSA NATIONAL FARMWORKER DESK ADDRESS**

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### Subpart 1061.70—Energy Crisis Assistance Program

Sec.

- 1061.70-1 Effective Date.
- 1061.70-2 Applicability.
- 1061.70-3 Policy.
- 1061.70-4 Who can apply for funds.
- 1061.70-5 Administration of the program at the State level.
- 1061.70-6 Local administering agency(ies)
- 1061.70-7 How a local program is operated.
- 1061.70-8 What these funds can be used for.
- 1061.70-9 Who is eligible to participate in this program.
- 1061.70-10 Termination of program.
- 1061.70-11 How a Governor requests funds.
- 1061.70-12 General funding policies.
- 1061.70-13 Post-funding requirements.
- 1061.70-14 CSA application review and approval process.
- 1061.70-15 Coordination with utility/fuel vendors.
- 1061.70-16 State Funding Plans.

APPENDIX A—REGIONAL OFFICE ADDRESSES

APPENDIX B—CSA POVERTY GUIDELINES

APPENDIX C—CAP FORM 11, ASSURANCE OF COMPLIANCE WITH . . . TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

APPENDIX D—CSA FORM 393, CERTIFICATE OF APPLICANT'S ATTORNEY

APPENDIX E—CSA FORM 440, PROJECT PROGRESS REVIEW REPORT

APPENDIX F—SF-269, FINANCIAL STATUS REPORT

APPENDIX G—SF-272, FEDERAL CASH TRANSACTIONS REPORT

APPENDIX H—OEO FORM 380, ACCOUNTING SYSTEM CERTIFICATION FORM

### Subpart 1061.90—State Agency Assistance Funded Under Section 231 of the Economic Opportunity Act

- 1061.90-1 Applicability.
- 1061.90-2 Purpose.
- 1061.90-3 Time frame for implementation of rule.
- 1061.90-4 Procedures for selecting a State agency to receive assistance under Section 231 of the EOA.
- 1061.90-5 Goals and eligible activities.
- 1061.90-6 Application process.
- 1061.90-7 Post-funding requirements.

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

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### Subpart 1061.4—New Statement of CSA Policy on Family Planning (CSA Instruction 6130-01 and 6130-1)

SOURCE: 44 FR 56549, Oct. 1, 1979, unless otherwise noted.

#### § 1061.4-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

#### § 1061.4-2 Effective date.

February 3, 1967 (CSA Instruction 6130-01); May 18, 1971 (CSA Instruction 6130-1)

#### § 1061.4-3 Purpose.

A 1966 amendment to the Economic Opportunity Act establishes new standards and requirements with regard to family planning services financed by CSA under Title II. It contains a new statement of policy on applications for CSA funds to provide family planning services and a revised set of "Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities".

#### § 1061.4-4 Role of family planning in community action.

(a) Family planning information and assistance has been found by many communities to be a highly effective element in their community action programs. Through family planning projects conducted by CAA(s) and delegate agencies, low-income families have been provided with opportunities to gain information and assistance of direct interest and use to them.

(b) A general statement on family planning as an important element of community action can be found in an CSA Program Pamphlet entitled "Family Planning" copies of which can be obtained from any CSA Regional Office or by writing to Community Action Program, CSA, Washington, D.C. 20506. The pamphlet describes different ways in which family planning activities can be conducted in



conjunction with community action programs.

**§ 1061.4-5 Policy on family planning applications.**

Family planning services, including contraceptive devices and drugs, may be made available to those individuals who meet eligibility criteria as set by the applicant agency, subject only to the limitations set forth in § 1061.4-6. Certain other limitations on costs to be paid for with Federal grants funds or local matching contributions remain in effect and are spelled out in the revised special conditions applicable to all CSA-assisted family planning activities. (Appendix A, Exhibit III, of this subpart). These include prohibitions on the use of project funds for promotion of those activities through mass media and a limitation of \$20 per patient per year on the expenditure of project funds for contraceptive devices or drugs.

**§ 1061.4-6 Requirements.**

(a) The requirements set forth below must be met by any applicant for CSA assistance to family planning services financed under Section 222(a).

(b) Criteria for Eligibility of a low-income individual for any family planning service shall be established by the applicant agency. If the program is operated by a delegate agency, rather than directly by the applicant, the delegate agency must also indicate its concurrence with the criteria. Any low-income person who meets these criteria shall be considered eligible for such assistance.

(c) Eligibility criteria established in accordance with the paragraph (b) of this section shall in all cases comply with the following limitations:

(1) *Income criteria.* All persons receiving CSA assisted family planning services must meet the test of need by reason of circumstances of poverty. Where a family planning program serves an area or neighborhood in which poverty is concentrated, all residents of the "target area" will normally be considered to meet this test. In other cases, the current CSA Income

Poverty Guidelines will apply (See Subpart 1060.2 of this chapter).

(2) *Other eligibility criteria.* Local agencies operating family planning programs may not discriminate against any potential beneficiary on the grounds of race, sex, color, national origin, or religion. They may, however, establish other criteria for eligibility for information, medical assistance, and supplies. Applicants must provide, at the time of application, information on the eligibility criteria they will use. Appendix A, Exhibit I to this subpart is a sample format for use in providing this information.

**§1061.4-7 Required assurance.**

(a) Any applicant for funds to conduct a family planning project, or a project that includes family planning services, must provide assurance to CSA that it will establish and follow procedures designed to insure that:

(1) No individual will be provided with any information, medical supervision, or supplies which such individual states to be inconsistent with his or her moral, philosophical, or religious beliefs;

(2) No individual will be provided with any medical supervision or supplies unless such individual has voluntarily requested such medical supervision or supplies; and

(3) The use of family planning services financed by a CSA grant shall not be a prerequisite to the receipt of services from or participation in any other program financed under the Economic Opportunity Act.

(b) To provide these assurances the local agency requesting funds for such a project shall submit to CSA, at the time of application, a "Statement of Assurance on Family Planning Activities" signed by the grantee and any delegate agency that will actually carry out the project. (See Appendix A to this subpart, Exhibit II for a copy of the Assurance Form.)

**§1061.4-8 Revised grant condition.**

As a result of the amendment to Section 222(a), CSA has revised the "Spe-

## §1061.4-9

cial Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities." The new special conditions are included as Exhibit III of Appendix A to this subpart. They supersede all earlier special conditions on family planning activities and will apply to all projects to be approved in the future.

### §1061.4-9 Effect on previously approved grants.

(a) The policies established in this subpart, in response to the amendment to Section 222(a), also apply to previously approved grants for family planning programs, or family planning elements of health programs.

(b) *Action to be taken.* Each grantee now operating a family planning component, or a component involving family planning information or services, must submit the following material to the appropriate CSA Regional Office no later than February 28, 1967. Failure to submit the required material by that date may result in suspension or termination of any CSA-assisted family planning activities.

(1) A statement describing the criteria to be used in determining eligibility of low-income individuals for family planning services. The statement must be signed by the chair of the governing body, or other appropriate official, of both the grantee and any delegate agency actually conducting the project involving family planning. A sample format for such a statement is included as Appendix A, Exhibit I to this subpart.

(2) A "Statement of Assurance" (See Appendix A, Exhibit II to this subpart) signed by the chair of the governing body, or other appropriate official, of both the grantee and any delegate agency actually conducting the project involving family planning.

(c) *Revised grant conditions apply.* The latest version of the "Special Conditions" now applies to such projects. (See Appendix A, Exhibit III to this subpart.)

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### APPENDIX A TO SUBPART 1061.4—NEW STATEMENT ON CSA POLICY ON FAMILY PLANNING

#### *Exhibit I—Sample Format for Information on Eligibility Criteria for Family Planning Services*

(To be executed by both the applicant or grantee and any delegate agency)

##### *1. Income Eligibility Criteria*

a. *Programs serving area or neighborhoods where poverty is concentrated.*

Will any income criteria be used other than residence in such area?

If so, specify.

b. *Programs serving other areas.* Will any income criteria other than the CSA "poverty line index" be used?

If so, specify.

##### *2. Other Eligibility Criteria*

Will any other eligibility criteria be used? If so, specify.

##### *3. Signature of Appropriate Officials*

The undersigned hereby declare that this is a true and complete statement of eligibility criteria to be used in the following family planning program or other program involving family planning activities.

a. *Identification of Component and Name of Applicant (or Grantee)*

b. *Signature of Chair of Grantee (or Applicant) Governing Body*

Name of Applicant (or Grantee) Agency:

Name of Official:

Title:

Signature:

Date:

c. *Signature of Chair of Delegate Agency Governing Body*

This must be completed only if a delegate agency will conduct the family planning activities; if more than one delegate agency will participate, all must be listed.

Name of Delegate Agency:

Name of Official:

Title:

Signature:

Date:

#### *Exhibit II—Sample Format for Assurance of Compliance With Section 244(4) of the Economic Opportunity Act in Family Planning Projects*

(To be executed by both the applicant or grantee and any delegate agency)

\_\_\_\_\_ (hereinafter called the Applicant).

(Name of Applicant or Delegate Agency)

AGREES THAT it will establish and follow the procedures listed below in order

to comply with the requirements of Section 224(4) of the Economic Opportunity Act of 1964, as amended.

1. The Applicant will insure that a copy of the statement set out below is posted conspicuously in a place where prospective clients will have an opportunity to see and read it. The statement will be printed in large type and will also be printed in languages other than English if a considerable number of prospective clients are fluent in only those languages.

Prior to the initial provision of any course of instruction, medical supervision, or supplies relating to family planning to any individual, a program staff member will bring the printed statement to the individual's attention and, if the individual is unable to understand its meaning, will accurately convey the substance of the statement to such individual.

"Statement on Family Planning Activities Assisted by the Community Services Administration".

"A. Anyone who takes part in this family planning program must do so of his/her own free will.

"B. You may not receive any medical assistance or supplies for family planning purposes unless you ask for them of your own free will.

"C. If you object to any particular form or method of family planning for any reason at all, including religious reasons, please say so. If you say so, you will not get information, assistance, or supplies that relate to that form or method of family planning.

"D. No one is allowed to force you in any way to participate in a family planning program. No one can tell you 'Unless you take part in the family planning program, you won't be allowed to receive welfare, or get job training, or put your child in the Head Start class.'

"E. If you have any questions about what this statement means please ask the officials or doctors who are operating the program. They will be pleased to explain.

"F. If you believe that any of the rules given above have been violated, please tell the officials or doctors who are operating the program at once. Or you may write or call the Community Services Administration, Washington, D.C. 20506 or the nearest CSA Regional Office."

2. THE APPLICANT further agrees to comply with the "Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities (November, 1966)".

3. THIS ASSURANCE is given in consideration of and for the purpose of obtaining either directly or indirectly any and all Federal grants, loans, contracts, property, or discounts, or other Federal financial assistance extended after the date hereof to the Applicant by the Community Services Ad-

ministration, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek administrative or other remedies in the event of non-compliance with this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignee, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date \_\_\_\_\_

(Name of Applicant or Delegate Agency)

By \_\_\_\_\_

(President, Chair of Board or comparable authorized official)

(Mailing Address)

*Exhibit III—Special Conditions Applicable to the Use of CSA Grant Funds for Family Planning Activities (Nov. 1966)*

1. Participation in the family planning component of this program must be entirely voluntary. No coercion or compulsion shall be employed to induce persons to use the family planning services funded by this CSA grant. No individual shall be provided with any medical supervision or supplies unless he or she has voluntarily requested such medical supervision or supplies.

2. Subject to the limitations set forth in these conditions, the project must provide and make known to each participant the availability of advice and assistance on a variety of family planning methods and techniques sufficient to insure that any person may obtain benefits from the program which are consistent with his or her personal beliefs and needs. No individual shall be provided with any information, medical supervision, or supplies which such individual states to be inconsistent with his or her moral, philosophical, or religious beliefs.

3. Use of the family planning services cannot be a prerequisite to receipt of services from or participation in any other program or activity whether or not funded by this grant.

4. The program must be under medical supervision sufficient to ensure that all practices conform to accepted medical standards.

5. Materials used in connection with this project shall not contain propaganda promoting a particular philosophy, technique or method of family planning, nor shall the administrators of this project declare any such preference in their relations with the participant in the program.



6. Project funds shall not be used to announce or promote through mass media the availability of the family planning program funded by this grant action.

7. No project funds shall be expended for any surgical procedures intended to cause abortions.

8. No project funds shall be spent for contraceptives, contraceptive devices, or drugs in an amount greater than twenty dollars (\$20) per patient per year.

9. Project funds shall be exclusively for providing assistance to low-income persons, or to residents of the area served by the community action program. If the project is being carried out in connection with similar programs for other income groups, records shall be maintained which are adequate to demonstrate that this requirement has been satisfied.

10. The project must not be in conflict with state and local law.

**Subpart 1061.20—Summer Youth Recreation Program (CSA Instruction 6168-2b)**

SOURCE: 44 FR 31000, May 29, 1979, unless otherwise noted.

**§ 1061.20-1 Applicability.**

This subpart applies to grantees funded under Section 222(a)(6) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

**§ 1061.20-2 Definitions.**

For purposes of this subpart the following definitions will apply:

(a) "Act" shall mean the Economic Opportunity Act of 1964, as amended.

(b) "Allocation" shall mean the distribution of funds among Community Action Agencies, and, where applicable, other public or private non-profit agencies.

(c) "Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

(d) "CETA Act" shall mean the Comprehensive Employment and Training Act of 1978 (Public Law 95-524).

(e) "Chief Elected Official" and "Chief Executive Officer" shall include their designees.

(f) "Community Action Agency" shall mean a political jurisdiction, public agency, or private non-profit

agency which has the power and authority and will perform the function set forth in Section 212 of the Act and is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently recognized as a community action agency by the Director.

(g) "CSA Regional Director" shall mean the ten Regional Directors of the Community Services Administration in specified geographical areas of the country. (See Appendix A for the appropriate CSA Regional Office serving your area).

(h) "Director" shall mean the Director of the Community Services Administration.

(i) "Economically Disadvantaged" shall mean a person who is a member of a family as defined under CSA income poverty guidelines.

(j) "Summer Youth Program" shall mean the Summer Employment Program for Economically Disadvantaged Youth funded under Title IV Section 481(a) of the Comprehensive Employment and Training Act of 1978 and administered by the U.S. Department of Labor.

**§ 1061.20-3 Summer youth recreation program—description and components.**

(a) *Description.* (1) The Summer Youth Recreation Program is designed to provide recreational opportunities for low-income children during the summer months. The programs will be conducted in conjunction with the Summer Youth Program administered by the U.S. Department of Labor. Summer Youth enrollees should be utilized to the maximum extent possible in the conduct of this program.

(2) The program shall begin as soon as possible after the spring closing of school and shall not continue beyond the end of the Federal fiscal year (September 30).

(3) To the maximum extent possible, Summer Youth Recreation Program sites shall be located directly in low-income communities or areas to ensure that disadvantaged youth are the beneficiaries of the programs. Activities shall be conducted in as many areas of the sponsor's jurisdiction and

designed to serve as many low-income children as possible within the constraints of effective program management and support.

(b) *Components.* (1) Summer Youth Recreation Programs will consist of the following components:

(i) Recreation support programs will provide recreation opportunities such as playground activities, organized sports and games, arts and crafts, informational tours, cultural field trips, instruction in the creative arts and special events.

(ii) Transportation support programs will provide transportation services to such cultural, recreational, or educational activities.

**§ 1061.20-4 Eligible sponsors/alternates.**

(a) *Eligible Agencies.* Agencies eligible to receive summer recreation funds shall be Community Action Agencies or other public or private non-profit agencies where no Community Action Agency exists or has been designated to administer a program.

(b) *Alternative Sponsors.* The CSA Regional Director may provide for the funding of an alternative sponsor if a sponsor, for any reason, is unable to establish or maintain an acceptable Summer Youth Recreation Program.

(c) *Delegate Agencies/Subgrants.* A Summer Youth Recreation sponsor may enter into contracts or subgrants under the terms set forth in and through use of OEO Form 280, *Agreement for Delegation of Activities*.

**§ 1061.20-5 Eligible participants.**

Participants in a Summer Youth Recreation Program shall be economically disadvantaged youth too young to obtain employment.

The main target group for the Summer Youth Recreation Program shall be disadvantaged youth between the ages of eight and thirteen. In addition, to the extent possible all eligible grantees will provide access and services to the handicapped.

**§ 1061.20-6 Funding.**

(a) *Allocation of Funds.* The allocation formula for each eligible applicant shall be based upon section 225(b) of the Act. Each eligible applicant shall be allocated funds based

upon the number of poor residing in that applicant's jurisdiction relative to the total number of poor residing in the United States. No eligible applicant is automatically entitled to receive its allotment. The allotments for applicants are target allotments to which they are entitled if applications of sufficient quality are submitted to justify funding. Target planning figures will be provided each Community Action Agency by the appropriate CSA Regional Office based upon the relative number of poor residing within that CAA's target area. CAAs will make applications for funding in the amount of that target planning figure in accordance with the application procedures established herein. Where funds permit, CSA Regional Directors shall have discretionary authority to provide funds to serve the recreational needs of economically disadvantaged children in areas not covered by a CAA where there is a clearly demonstrated need for such services and a viable delivery system exists through which to provide the services. Additional factors which will be taken into consideration in making funding decisions will be applicants ability to operate a high quality program based upon past overall grantee performance; evidence in the grant application of mobilization of non-CSA resources; coordination with other appropriate state and local organizations; and, the number of poor children proposed to be served.

(b) *Non-Federal Share; Waiver of.* Non-Federal share required by section 225(c) is waived for all programs funded under section 222(a)(6), Summer Youth Recreation Programs. Due to the depressed economic circumstances existing for State and local governments which has impacted particularly on local educational institutions, the most logical source for non-Federal share for this program, the Director has waived the requirement for this year. However, where possible, grantees are encouraged to seek non-Federal share and mobilize local resources. The waiver is automatic and does not require a request for waiver.

[45 FR 10795, Feb. 19, 1980]

§ 1061.20-7 Application process.

(a) *Forms/Documentation Required.* The basic forms to be used in applying for a Summer Youth Recreation Program are as follows: (1) CSA Form 301, Applicant Certification (new grantees only); (2) CAP Form 25, Program Account Budget; (3) CAP Form 25a, Program Account Budget Support Sheet; (4) CSA Form 419, Summary of Work Programs and Budget; (5) SF 424, Federal Assistance (Sections I and II completed).

(i) When Delegating Programs: (A) CAP Form 11, Assurance of Compliance with Civil Rights Act; (B) CAP Form 85, Administering Agency Funding Estimate; (C) CAP Form 87, Delegate Agency Basic Information; (D) OEO Form 280, Agreement for Delegation of Activities.

These forms will be made available to grantees by the appropriate CSA Regional Office.

(ii) All eligible applicants should submit the original and two (2) copies of all required forms and documents to the appropriate CSA Regional Director.

(b) *Deadline for Submission of Applications.* Summer Youth Recreation Program grant applications shall be submitted to CSA Regional Offices no later than 60 days following publication in the FEDERAL REGISTER.

(c) *Clearinghouse Notification and Review.* All eligible applicants are required to comply with the Project Notification and Review System procedures as outlined in 45 CFR 1067.10 (CSA Instruction 6710-3a). Applicants should submit their notifications of intent (NOIs) to the appropriate clearinghouses immediately following the publication of this FEDERAL REGISTER. Where requested by the Clearinghouses, applicants must submit their application to the Clearinghouses for review. Comments made by the Clearinghouses should accompany the application submitted to CSA together with evidence of consideration of those comments. Applicants may expedite the final release process by obtaining the appropriate Clearinghouse and Governor's approval in advance or in less time than required.

(d) *Delegation of Authority.* Regional Directors are hereby delegated the au-

thority to sign Summer Youth Recreation Program grants.

(e) *Monitoring and Evaluation.* The CSA Regional Offices will be responsible for monitoring and evaluation of the Summer Youth Recreation Program. In addition, CSA Headquarters may undertake on-site evaluations of selected projects.

[45 FR 10795, Feb. 19, 1980]

§ 1061.20-8 Expenditure of funds.

(a) *Allowable Costs.* (1) Administration, includes salaries, wages and fringe benefits of administrative staff (but not program staff); consumable office supplies; rent, and utilities; telephone and postage; travel of administrative staff and audit costs. Funds in this category are subject to the administrative cost limitation of 15% as defined in OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(2) Recreation services including but not limited to: Purchase of recreation equipment<sup>1</sup> and supplies up to \$200 per unit cost to be used in support of the program; rental of recreational equipment and supplies to be used in support of the program; admission to special events; field trip expenses; salaries; wages, fringe benefits, and orientation of program staff, such as, art instructors and playground supervisors; transportation for participants and program staff; lunches or food provided as an integral part of a recreation activity; recreation clothing and insurance. The standards to be used for the procurement of supplies, equipment, and other material and services with federal grant funds are described in CSA Instruction 7001-01a and OMB Circular A-102 (FMC 74-7).

(3) Charges above operating costs for the use of grantee owned facilities will not be made to the Summer Youth Recreation Program except with the written authorization of the appropriate CSA Regional Director.

(4) Transportation services, including but not limited to: bus tokens, and rental of buses and vans.

<sup>1</sup>Disposition of property will be in accordance with the CSA policy published in CSA Instruction 7001-01a.



(b) *Non-Allowable Costs.* (1) Summer Youth Recreation Program funds shall not be expended on office equipment, in-place installations, capital improvements, to compensate participants in the program or to purchase transportation vehicles or equipment such as cars, vans, or buses.

(2) Summer Youth Recreation Program funds shall not be used to finance any other program activities and services not authorized under the Summer Youth Recreation Program such as, but not limited to, work experience, on-the-job training or public service employment activities.

(3) Summer Youth Recreation Program funds shall not be used to finance trips outside a 100-mile radius of the sponsor's jurisdiction unless the trip has received the specific written approval of the CSA Regional Director of his/her designee.

#### § 1061.20-9 Coordination with other programs.

(a) The success of the Summer Youth Recreation Program depends to a great degree upon coordination with other programs and upon the mobilization of other public and private resources. A particularly key element in successful recreational programs is the utilization of the Summer Youth Program (summer employment for disadvantaged youth between the ages of 14 and 21). This program has been used since the inception of the Summer Youth Recreation Program to provide program personnel who serve as playground supervisors, coaches, field trip monitors, etc. in the Summer Youth Recreation Programs.

(b) All grantees should utilize the Summer Food Service Program for children as a part of the Summer Youth Recreation Program.

The Summer Food Service Program provides meals for low-income children from needy areas and is administered by the Department of Agriculture through state agencies or the Food and Nutrition Service Regional Offices (see Appendix B for listing of those organizations which can assist grantees in applying for the program). Organizations planning to apply for a Summer Youth Recreation Program grant should contact the appropriate

state or regional officials as soon as possible to assure participation in the Summer Food Service Program for Children.

(c) The Summer Youth Recreation Program will be closely coordinated with related social service programs operated by other community based organizations (park and recreation departments, schools, etc.) with a view of minimizing possible duplication of effort and promoting efficiency by use of common facilities and services.

#### § 1061.20-10 General requirements.

(a) *Maintenance of Effort.* No grantee shall, because of funds granted under Section 222(a)(6) of the Act, reduce or decrease funds already planned for summer youth recreation activities of a nature similar to those provided under the aforementioned section.

(b) *Insurance.* (1) *Public Grantees.* Public Grantees will follow their requirements and practices.

(2) *Nongovernmental Grantees.* General liability insurance, including automobile liability insurance must be obtained, in amounts which assure the adequate protection of program participants and the grantee. The required minimum property damage coverage shall be \$25,000.

(c) *Bonding.* (1) Public grantees will follow their regular requirements and practices.

(2) Prior to the release of funds to any private grantee, CSA must receive written assurance that they are covered by or have made arrangements for appropriate bonding of grantee officials in accordance with provisions set forth in 45 CFR § 1050.15 (CSA Instruction 6800-3).

(d) *Program Progress Report.* All grantees must submit a Program Progress Report (PPR) as outlined in 45 CFR § 1050.15 (CSA Instruction 6800-9) on the accomplishments of the Summer Youth Recreation Program to the appropriate CSA Regional Office. In the case of CAAs and grantees with other CSA funding, the Program Progress Report will be submitted during the report period following termination of the program. All other grantees must submit a final report

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within 90 calendar days following the termination date of the grant or 90 days after the program concludes.

(e) *Financial Reporting.* In the case of CAAs and grantees with other CSA funding, a financial report on the Summer Youth Recreation Program is to be submitted as part of the quarterly report which follows termination of the program to the appropriate CSA Regional Office in accordance with the requirements and procedures set forth in 45 CFR § 1050.70 (CSA Instruction 6800-8). All other grantees must submit a final financial report within 90 days after the termination date on the grant or 90 days after the program concludes.

(f) *Auditing.* Audit requirements for this program are to be met by complying with CSA Instruction 6801-1 and any special conditions that are part of the grant award.

(g) *Safety and Health Conditions.* Participants shall not be exposed to conditions which are unsanitary or hazardous or dangerous to their safety or health.

(h) *Licensing.* All transportation services under this program will be from sources properly licensed to provide carriage of the public, and which are operated in compliance with all applicable local, state and/or federal statutes covering public transportation.

### APPENDIX A—CSA REGIONAL OFFICES

Director, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Region I—States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Director, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Region II—States served: New Jersey, New York, Puerto Rico, Virgin Islands.

Director, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104, Region III—States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Director, 101 Marietta Street, NW., Atlanta, Georgia 30323, Region IV—States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Director, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Region V—

## Title 45—Public Welfare

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Director, 1200 Main Street, Dallas, Texas 75202, Region VI—States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Director, 911 Walnut Street, Kansas City, Missouri 64106, Region VII—States served: Iowa, Kansas, Missouri, Nebraska.

Director, Federal Office Building, 1961 Stout Street, Denver, Colorado 80202, Region VIII—States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Director, 450 Golden Gate Avenue, P.O. Box 36008, San Francisco, California 94102, Region IX—States served: Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories.

Director, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101, Region X—States served: Alaska, Idaho, Oregon, Washington.

### APPENDIX B—STATE SCHOOL LUNCH DIRECTORS

1. Mr. T. G. Smith, Coordinator, Child Nutrition Program, State Department of Education, 410 State Office Building, Montgomery, AL 36130.
2. Mrs. E. Ruth Benigno, School Food Coordinator, State Department of Education, Pouch F, Juneau, AK 99801.
3. Mrs. Letea Tualo, Director, Food Services Program, Department of Education, Pago Pago, AS 96920.
4. Mrs. Junetta Barrett, Director, Food Nutrition Division, Department of Education, 1535 West Jefferson, Phoenix, AZ 85007.
5. Mr. Doyle Border, Coordinator, School Food Services, State Department of Education, 403 E Education Building, Little Rock, AR 72201.
6. Mrs. L. Gene White, Director, Office of Food and Nutrition Services, State Department of Education, 721 Capitol Mall, Sacramento, CA 95814.
7. Mr. Daniel G. Wisotzkey, Director, School Food and Services and Supportive Services, Colorado State Department of Education, 201 East Colfax, Room 318 State Office Building, Denver, CO 80203.
8. Mrs. Ann Tolman, Director, Child Nutrition Programs, State Department of Education, Post Office Box 2219, Room G-25, Hartford, CT 06115.
9. Mr. Robert L. John, State Supervisor of Food Services, Department of Public Instruction, John G. Townsend Building, Dover, DE 19901.
10. Mr. Joseph M. Stewart, Director, Department of Food Services, Public Schools of District of Columbia, 3535 V Street NE., Washington, D.C. 20018.

11. Mr. George A. Hockenberry, Administrator, Food and Nutrition Management, State Department of Education, Tallahassee, FL 32304.
12. Miss Josephine Martin, Administrator, School Food and Nutrition Section, State Department of Education, 156 Trinity Avenue South West, Atlanta, GA 30303.
13. Ms. Eleanor K. Smith, Associate Superintendent Food Services, Department of Education, Government of Guam, Post Office Box DE, Agana, GU 96910.
14. Mr. Stanley W. Doucette, Director, School Food Services, State Department of Education, Post Office Box 2360, Honolulu, HI 96804.
15. Mr. Cecil F. Olsen, Director, Food Services Branch, State Department of Education, Len B. Jordan Office Building, Room 213, Boise, ID 83720.
16. Mr. Robert E. Ohlzen, Manager, School Food Services Section, Illinois Office of Education, 100 North First Street, Springfield, IL 62777.
17. Mr. John J. Harter, Director, Division of School Food and Nutrition Programs, State Department of Public Instruction, 120 West Market Street, 16th Floor, Indianapolis, IN 46204.
18. Mr. Verne E. Carpenter, Director, Child Nutrition Programs Division, State Department of Public Instruction, Grimes State Office Building, Des Moines, IA 50319.
19. Mrs. Rita Hamman, Director, School Food Services, State Department of Education, Kansas State Education Building, 120 East 10th Street, Topeka, KS 66612.
20. Mr. Redwood Taylor, Director, Division of School Food Services, Bureau of Administration and Finance, State Department of Education, Capital Plaza, 19th Floor, Frankfort, KY 40601.
21. Dr. Joseph A. Dazzio, Director, Local School System Services, State Department of Education, Post Office Box 44064, Baton Rouge, LA 70804.
22. Miss M. Gertrude Griney, Director, School Nutrition Programs, State Department of Education, Education Building, Augusta, ME 04333.
23. Mrs. Joan H. Weatherholtz, Coordinator, Food and Nutrition Section, State Department of Education, BWI Airport, Post Office Box 8717, Baltimore, MD 21240.
24. Mr. John C. Stalker, Director, Bureau of Nutrition Education and School Food Services, State Department of Education, 182 Tremont Street, 10th Floor, Boston, MA 02111.
25. Mr. James L. Borough, Supervisor, Food and Nutrition Programs, School Management Services, State Department of Education, Post Office Box 30008, Lansing, MI 48909.
26. Mr. Charles L. Matthew, Director, Child Nutrition Section, State Department of Education, Capitol Square Building, Room 509, St. Paul, MN 55101.
27. Mr. John H. Walker, Assistant Director, Administration and Finance, State Department of Education, Room 604, Walter Sillers Office Building, Post Office Box 771, Jackson, MS 39205.
28. Mr. Wilbert Grannemann, Director, School Food Services, Department of Elementary and Secondary Education, Jefferson Building, Post Office Box 480, Jefferson City, MO 65101.
29. Mr. H. Brisbin Skiles, Supervisor, School Food Services, Office of Public Instruction, State Capitol, Helena, MT 59601.
30. Dr. Ray Steinert, Director, School Food Services, State Department of Education, 301 Centennial Mall South, 6th Floor, Lincoln, NE 68509.
31. Miss Eleanor Bateman, Supervisor of Food Services, State Department of Education, 400 West King Street Capitol Complex, Carson City, NV 89710.
32. Mr. Lloyd Littlefield, Director, Food and Nutrition, Division of Administration, State House Annex, Concord, NH 03301.
33. Mr. Walter F. Colender, Director, Bureau of Child Nutrition Programs, Division of Field Services, State Department Education, 225 West State Street, Trenton, NJ 08625.
34. Mr. Harry Riser, Director, School Food Services, State Department of Education, Santa Fe, NM 87503.
35. Mr. Richard O. Reed, Chief, Bureau of School Food Management, State Department of Education, 99 Washington Avenue—17th Floor, Room 1736, Albany, NY 12230.
36. Mr. Ralph W. Eaton, Director, State Department of Public Instruction, Post Office Box 12197, Raleigh, NC 27605.
37. Miss Roberta A. Bosch, Director, School Food Services, State Department of Public Instruction, State Capitol Building, Bismarck, ND 58505.
38. Mr. Robert H. Koon, Director, Division of School Lunch, State Department of Education, 65 South Front Street, Room 1009, Columbus, OH 43215.
39. Mr. Fred L. Jones, Director, School Lunch Section, State Department of Education, 2500 North Lincoln Boulevard, Oliver Hodge Memorial Education Building, Room 340, Oklahoma City, OK 73105.
40. Mr. Richard S. Miller, Coordinator, School Food and Nutrition Services, Oregon State Department of Education, 924 Lancaster Drive North East, Room 212, Salem, OR 97310.
41. Mr. Warren M. Vann, Jr., Chief, Division of Food and Nutrition Services, State Department of Education, Post Office Box 911, Harrisburg, PA 17126.
42. Mr. Carlos Martinez Aviles, Director, School Lunchroom Division, Department



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- of Education, URB Industrial Tres Monjitas, Post Office Box 759, Hato Rey, PR 00919.
43. Mr. Robert F. Kaveny, Program Business Manager, Office of School Food Services, Roger Williams Building, Hayes Street, Providence, RI 02908.
44. Mr. John L. Seuryneck, Director, Office of School Food Services, State Department of Education, 305 Rutledge Building, Columbia, SC 29201.
45. Mr. Gary Rhead, Administrator, School Food Services, Department of Education and Cultural Affairs, Division of Elementary and Secondary Education, Pierre, SD 57501.
46. Mrs. Mary Louise Richardson, Director, School Food Services, State Department of Education, Cordell Hull Building, Room 117, Nashville, TN 37219.
47. Mr. Charles A. Cole, Director, School Lunch Program, Texas Education Agency, 201 East 11th Street, Austin, TX 78701.
48. Mr. George A. Bussell, Food Service Officer, Department of Education, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950.
49. Mr. Cluff D. Snow, Coordinator, School Food Services, 250 East 500 South, Salt Lake City, UT 84111.
50. Miss Banba Foley, Chief, Child Nutrition Programs, State Department of Education, State Office Building, Montpelier, VT 05602.
51. Vacant, Director, School Lunch Program, Department of Education, Post Office Box 630, Charlotte Amalie, St. Thomas, VI 00801.
52. Mr. John F. Miller, Supervisor, School Food Services, State Department of Education, 8th Street Office Building, Richmond, VA 23216.
53. Miss Virginia R. Whitlatch, Director, School Food Services, Department of Public Instruction, Old Capitol Building, Olympia, WA 98504.
54. Mrs. Faith Gravenmier, Director, Child Nutrition Programs, State Department of Education, State Capitol Building, Charleston, WV 25305.
55. Mr. Edward J. Post, Director, Bureau for School Food Services, Department of Public Instruction, 126 Langdon Street, Madison, WI 53703.
56. Mr. Robert M. Skyles, Assistant Superintendent of Administrative Services, State Department of Education, Hathaway Building, Cheyenne, WY 82002.

### USDA REGIONAL OFFICES

57. Mid-Atlantic Regional Office, Food and Nutrition Service USDA, One Vahlsing Center, Robbinsville, NJ 08681: Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, Virgin Islands, Puerto Rico.

## Title 45—Public Welfare

58. Midwest Regional Office, Food and Nutrition Service USDA, 536 South Clark Street, Chicago, IL 60606: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
59. Mountain Plains Regional Office, Food and Nutrition Service USDA, 1832 Stout Street, Room 296, Denver, CO 80202: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.
60. New England Regional Office, Food and Nutrition Service USDA, 34 Third Avenue, Burlington, MA 01803: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
61. Southeast Regional Office, Food and Nutrition Service USDA, 110 Spring Street, North West, Atlanta, GA 30309: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
62. Southwest Regional Office, Food and Nutrition Service USDA, 1100 Commerce Street, Dallas, TX 75202: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
63. Western Regional Office, Food and Nutrition Service USDA, 550 Kearny Street, San Francisco, CA 94108: Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Samoa America, Trust Territory, Washington.

### Subpart 1061.30—Emergency Energy Conservation Program (CSA Instruction 6143-1a)

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 41 FR 29125, July 15, 1976, unless otherwise noted.

#### § 1061.30-1 Applicability.

This subpart is applicable to grantees under section 222(a)(12) of the Community Services Act of 1974, if the assistance is administered by the Community Services Administration.

#### § 1061.30-2 Definitions.

(a) *Program.* The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specified activities. Example: CSA's Emergency Energy Conservation Services Program.

(b) *Project.* The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The Weather-

erization Project of the CAA in Philadelphia, Pa.

(c) *Local administering agency.* Any agency, organization or other group, whether grantee or delegate agency, which conducts or carries out project activities at the local community level.

#### § 1061.30-3 Background.

On July 28, 1975 CSA published in the *FEDERAL REGISTER* (*FEDERAL REGISTER*, Vol. 40, No. 145) and issued CSA Instruction 6143-1. As a result of the publication and on the basis of actual field experience in the operation of projects, comments have been received which indicate a need for clarification of certain passages in the Instruction. The changes in this Instruction seek to achieve that clarification, and do not represent any major substantive changes in agency policy. The principal changes involve a designation of eligible activities using terminology that conforms with anticipated program account structures and avoids confusion with programs of other federal agencies; and amplification of agency policy on use of funds, including a more detailed definition of materials and a reference to the existing CSA Instruction on administrative costs; clarification of the relationship of Crisis Intervention programs to other community support networks; editorial revision of the section on Program Policy to reflect the issuance of CSA Guidance since publication of the original Instruction, including clarification of the role of the Project Advisory Committees in overseeing quality of planning, materials, and workmanship in Weatherization projects; and more precise instructions on the submission of data reporting forms.

#### § 1061.30-4 Purpose.

The purpose of this Instruction is to inform grantees of the above changes and to publish those changes for their information.

#### § 1061.30-5 Introduction.

Section 222(a) of the Community Services Act of 1974 includes a new subsection 12 that authorizes:

A program to be known as Emergency Energy Conservation Services to enable low-

income individuals and families, including the elderly and the near poor to participate in energy conservation programs designed to lessen the impact of the high cost of energy on such individuals and families and to reduce individual and family energy consumption.

This Instruction discusses the purpose of the program, conditions of the program, funding policies, activities eligible for funding, application submission offices and required application documents.

#### § 1061.30-6 Purpose of the Special Emphasis Program.

The major assumption underlying this program is that the problems of the low-income created by the energy crisis have severely limited their ability to maintain minimum living conditions and in some cases, to survive. The major goal of the program is to enable low-income individuals and families, including the elderly and the near poor, to participate in energy conservation programs designed to lessen the impact of the high cost of energy on such individuals and families and to reduce individual and family energy consumption. A major component of the program is to support weatherization activities which will increase the thermal efficiency of the homes of the poor and the near poor. Another is to help assure participation of the poor and near poor in the decision making processes that will determine the pricing structures and availability of increasingly scarce energy resources. In addition there are or will be in many communities emergency situations calling for projects of crisis intervention to restore utility service or prevent cut-offs, provide emergency fuel deliveries or support other activities to assist those suffering serious hardship which endanger their health.

#### § 1061.30-7 Eligible participants.

(a) Individuals, families, and elderly persons who are poor and near poor, are eligible to participate in programs funded under section 222(a)12 of the Act.

(b) For this program, the near poor are those persons in families or unrelated individuals whose incomes are

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between 100 percent and 125 percent of the poverty thresholds as set forth in CSA Instruction 6004-1i.

### § 1061.30-8 Eligible applicants.

CAAs, SEOOs, and non-profit CDCs and other public and/or private non-profit organizations and agencies that meet CSA eligibility criteria may apply.

### § 1061.30-9 Eligible activities.

(a) *Weatherization.* Making home repairs and energy saving improvements to minimize heat loss and improve thermal efficiency. Components include repairs to stop heat loss through infiltration; installation of a balanced combination of energy saving home improvements, including insulation and storm windows and doors; and where needed, the adjustment and repair of heating systems.

(b) *Crisis intervention.* Intervention to prevent hardship or danger to health due to utility shut-off or lack of fuel. Components include grants, loans, fuel voucher or stamp programs, or payment guarantees; mediation with utility companies or fuel suppliers and financial counseling; and maintenance of emergency fuel supplies, warm clothing, and blankets.

(c) *Consumer information, education, and legal assistance.* Dissemination of energy conservation information, conducting of energy conservation education programs and the representation of the interests of the poor in public proceedings involving, for example, energy policy and utility rate structures.

(d) *Transportation.* Projects designed to offset the increased costs to the poor of transportation needed for access to essential services and employment.

(e) *Alternate energy sources.* Development and application to energy needs of the poor of technology that capitalizes on non-fossil fuels and renewable energy sources such as solar and wind power or methane digesters; or that can make conventional fuels available to the poor at substantially decreased cost and/or increase efficiency.

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(f) *Program support.* Training and technical assistance, research and demonstration, and evaluation.

### § 1061.30-10 Program policy.

CSA grantees are in a unique position to provide a comprehensive range of essential services to those individuals severely affected by the energy crisis. Grantees should develop balanced projects which are responsive to both short and long range needs of their constituents, and which will assure their full participation in the decision making processes which at every level of society will determine the policies which govern the management, pricing structures and availability of increasingly scarce energy resources. Finally, every effort must be made to integrate grantee energy projects with other projects which they operate, including housing, transportation, manpower training and development, nutrition, and economic development activities. In carrying out energy activities grantees shall take into account the special needs of the elderly, the handicapped, infants, and sick people.

(a) *Project Advisory Committees.* (1) Funded projects shall assure that each local administering agency shall have a Project Advisory Committee, made up of at least 51 percent poor persons and including representatives of the local governments and other resource agencies within the community served as well as a representative or representatives of the local public utility and local fuel dealers.

(2) The Project Advisory Committee should be the focal point of energy-related planning for the local administering agency; it can also play a major leadership role in the larger community, educating and influencing the non-poor about the need for and the benefits accruing to them from energy conservation.

(3) It shall be the role of the Project Advisory Committee to recommend to the Grantee Board policies for guiding the development of the appropriate local response to energy problems of the poor, including policies for selection of dwellings to be weatherized



and households eligible for crisis intervention assistance.

(4) It shall also be the role of the Project Advisory Committee to recommend to the Board standards of program quality to be met by each project. In the case of weatherization programs those standards shall include provisions designed to assure quality of materials and workmanship; and each Project Advisory Committee shall be responsible for recommending to the Board a system for inspection of completed work that will assure:

(i) That the principles of a balanced combination of energy conserving improvements as set forth in the "Community Planning Guide to Weatherization" have been adhered to;

(ii) That infiltration problems have been dealt with;

(iii) That insulation materials meet minimum Federal standards of effectiveness; (See CSA Pamphlet 6143-6, A Community Planning Guide to Weatherization, Appendix C); and

(iv) That quality of workmanship has been maintained, in accordance with standards described on pages 27-29 of the Community Planning Guide Weatherization, which include the following:

(A) Proper installation of insulation with vapor barrier toward heated space;

(B) Provision of ventilation in attic and/or crawl space;

(C) Proper density of loose fill or blown-in insulation to prevent excessive settling;

(D) Adequate protection of water pipes in unheated areas after installation of insulation; and

(E) Proper installation of attic floor insulation so that it does not touch roof at eaves.

NOTE 1: Projects may refer to In the Bank . . . Or up the Chimney, Published by the U.S. Department of Housing and Urban Development, Washington, D.C. 20410, for additional information on specific techniques and standards of workmanship.

NOTE 2: For a fuller discussion of the issues appropriate for Project Advisory Committee consideration and recommendations, see A Community Planning Guide to Weatherization, CSA Pamphlet 6143-6 p. 10.

(b) *Planning and assessment of need.* A major goal of all funded projects will be more accurate assessment of

the local impact on the poor of energy shortages and price increases, and the development of a local planning capability involving major community resources to deal with both emergencies and long range implications of energy cost and availability. The Project Advisory Committee, using the information collected in the two required forms for energy programming, the Building Weatherization Plan and the Energy Data Form, will have a primary role to play in the local impact assessment.

(c) *Weatherization.* (1) CSA has issued "A Community Planning Guide to Weatherization," CSA Pamphlet 6143-6, which expresses in detail agency procedures governing the conduct of weatherization programs. In carrying out such projects, first priority must be given to stopping infiltration by repairing broken windows, patching roofs and walls, caulking cracks and joints, and weather-stripping doors and windows; second priority should be given to installing a balanced combination of energy-conserving home improvements including insulation of attics, floors, walls, and exposed heating ducts, and installation of storm doors and windows. Where needed, foundation banking, replacement of furnace filters, minor adjustments and repair of heating systems or replacement of dangerous heating sources, may be undertaken. Able-bodied residents of dwellings weatherized should wherever practicable contribute their services to the weatherization work. Where possible, costs of major building repair or heating system improvements should be supported with funds from other sources such as appropriate FmHA or HUD loans.

(2) All administering agencies shall procure liability insurance or bonding to cover any damage to persons or property in connection with weatherization activities, the cost for which shall be considered a program cost, not an administrative cost, and shall not be counted in figuring the ten percent non-material costs. Before beginning work on the weatherization of any dwelling the administering agency shall obtain from the (owner) (householder) permission to enter upon the

premises and perform the weatherization work. In addition, where obtainable without objection from the householder (but in the case of at least ten percent of the dwellings worked on) administering agencies should obtain permission to inspect fuel and utility bills, in the following or equivalent language:

(Householder, or in the case of rental property where utilities are paid by landlord, Owner) hereby grants permission to (the administering agency) or its designee to inspect heating fuel and utility billing records for (address) for not more than five years before and subsequent to the performance of the weatherization work for the sole purpose of obtaining data required for evaluation of the energy conserving effectiveness of the work done, and directs the pertinent utility and fuel companies to make such records available to (the administering agency) or its designee.

(3) In the case of renter occupied dwellings, the goal of any weatherization project must be to assist low income tenants and to avoid enrichment of property owners. The primary effort of administering agencies must be to seek the enforcement of local codes and the mobilization of owner's resources for the installation of needed energy conserving improvements; and wherever projects do carry out weatherization of renter occupied dwellings, agreements should be obtained from property owners which include a provision that following the completion of the weatherization program the low income tenant shall not be evicted or removed from the dwelling for a stated period of time so long as he has complied with all on-going obligations and responsibilities owed the landlord or owner. Such agreements should, in addition, provide as follows:

(i) Where the owner or landlord pays for heating or cooling the dwelling, the agreement should provide either (a) that the owner or landlord shall reduce the rent over a stated period of time by an amount equal to the value of the weatherization materials supplied, and agrees not to raise the rental on the property beyond the preweatherization level for a stated period thereafter; or (b) that the owner or landlord shall repay to the administering agency or grantee over a

stated period of time an amount equal to the value of the materials supplied, and agrees not to raise the rental on the property for such period of time and for a stated period of time thereafter:

(ii) Where the tenant pays for heating and cooling the dwelling, the agreement may provide merely that the owner or landlord agrees not to raise the rental on the property for a stated period of time.

(4) Any exceptions must be approved by the Administering Agency or Grantee on a case by case basis, on the recommendation of the Project Advisory Committee and based on documented need. Agreements obtained should be maintained in the files of the Administering Agency or Grantee, and shall be made for inspection upon request.

(5) For each building on which weatherization work is done, a Building Weatherization Plan, CSA Form 481, must be completed, in accordance with directions provided in the Community Planning Guide to Weatherization, Part VI, pp. 16-26. Copies of the Building Weatherization Plan must be filed in accordance with Paragraph 11 of this Instruction.

(6) In any case where a Building Weatherization Plan indicates expenditures of more than \$250 on any building in a project funded in Federal Region IV, VI, or IX, or more than \$350 on any building in a program funded in Federal Region I, II, III, V, VII, VIII, or X, the expenditure must be justified in writing and approved by the Project Advisory Committee. Documentation of such justification and approval shall be made available to CSA upon request.

(7) Of funds allocated to weatherization activities, at least ninety percent shall be expended for materials costs. Beginning with FY 1975 funds, costs incurred by grantees for materials may include costs of delivery to work site and reasonable costs of tools and equipment required for installation, including blower equipment required for cellulose fiber or other loose fill insulation. Purchase of materials will be made in accordance with current CSA regulations governing such activities.

(8) Where administering agencies have documented bona fide attempts to secure labor, supervision, and/or transportation costs from other sources without success adequate to their needs, grantees may seek relief through their proposals or through a request for a work program amendment.

(d) *Crisis intervention.* (1) This immediate, short-term assistance, consisting of intervention to prevent hardship or danger to health due to utility shut-off or lack of fuel, should be followed with program efforts that will have a long-range effect on the individual's ability to conserve energy and pay fuel bills. Crisis intervention should not be used to provide help to persons having access to direct assistance through other supportive service networks such as welfare; rather, the administering agency should take all appropriate measures to assure the responsiveness of such networks to the energy needs of clients. Help from this Crisis Intervention Program should be provided only in cases of extreme crisis when other service networks cannot respond.

(2) In any case, actual payment of utility or fuel bills by this program should be a one-time crisis intervention resource to be considered only as a last resort after negotiation with utility or fuel companies; and care must be taken to avoid having the grants looked upon as a source of ongoing subsidy for energy costs of the poor.

(e) *Consumer information, education, and legal assistance.* (1) Studies indicate that residential use of energy is in large measure of function of the lifestyle of the residents of any particular dwelling; and consequently grantees should where possible conduct programs of energy conservation education in conjunction with weatherization projects.

(2) In addition, escalating costs of energy are causing increasing numbers of states and local communities to review utility rate structures and regulatory policies with interest in bringing relief to certain classes of customers. Wherever such reviews are taking place, whether in formal proceedings of regulatory commissions or merely

informally, grantees should seek to involve themselves in order to insure that the interests of the poor are adequately represented, and that low income persons have the same high level of legal and technical expertise at their service as the utility companies and the other classes of energy users participating in these proceedings.

(3) Finally, as the need for energy conservation becomes more generally recognized there will be some who enter the field with the intent of exploiting those without technical knowledge or understanding of effective conservation techniques. Grantees should be aware of these dangers and work closely with state and local law enforcement and consumer protection agencies to curb abuses and provide redress for victimized consumers.

(f) *Transportation.* Projects undertaking transportation activities supported with section 222(a)(12) funds shall assure (1) that such activities address the energy-related increased costs of transportation for the poor, (2) that projects designed to provide assistance in the purchasing of fuel shall do so only as a last resort, thereby minimizing the subsidy of high cost fuel, and (3) that maximum use is made of existing transportation resources.

(g) *Alternate energy sources.* Because of the more diffuse nature of alternate energy sources such as the sun, they should only be used on buildings which have been thoroughly weatherized through stopping of infiltration and installation of the optimal combination of energy conserving improvements.

(h) *Program Support: Research and Demonstration Programs.* (1) Section 232 provides the authority to conduct R&D projects to further the mandate of Title II, including section 222(a)(12). R&D projects in the area of emergency energy conservation shall directly contribute to the accomplishment of the ends of the Emergency Energy Conservation Services Program and shall conform to one or more of the following standards and definitions:

(i) Development of new approaches and/or methods that will aid in over-



coming special problems of poverty through:

(A) Support of projects designed to provide conclusive information concerning the usefulness of a program or technique thought to have potential of major impact on an identified special problem. The generation of persuasive knowledge is the central goal of such efforts; the major criterion of success is the utility of the knowledge produced in designing projects which meet carefully defined needs of the poor.

(B) Support of individual projects or series of projects which test specific program strategies or techniques to deal with special problems of poverty. Such demonstrations are designed to (1) provide an experience base sufficient to determine the applicability of the strategy or technique; and (2) provide exposure for strategies and techniques to increase their acceptance and application by funding sources and policymakers.

(C) Support of projects which (1) directly intervene to change established institutions or (2) establish alternative institutions or mechanisms to serve poor people.

(ii) Collection and maintenance of appropriate data which is adequate to produce dissemination and utilization of project results.

#### § 1061.30-11 Funding.

(a) *Funding Offices.* CSA Regional Offices will receive grant applications for operating projects including eligible activities set forth under §§ 1061.30-7(a) through 1061.30-7(d), above, and for Training and Technical Assistance to operating projects within their geographical area. CSA Headquarters, Washington, D.C., will receive grant applications for the development of Alternative Energy Sources described in § 1061.30(7)(e), above, and Program Support Activities national in character, including Research and Demonstration Programs and Evaluation. All applicants submitting proposals to CSA Headquarters shall notify the appropriate Regional Office by means of the regional checkpoint procedures (OEO Form 394).

(b) *Non-Federal Share.* The non-Federal Share requirement is waived for

Crisis Intervention and Program Support as defined in paragraph 7f (Training and Technical Assistance, Research and Demonstration, and Evaluation).

[41 FR 29125, July 15, 1976, as amended at 43 FR 9818, Mar. 10, 1978]

#### § 1061.30-12 Application requirements.

(a) Research and Demonstration Proposals should be submitted in accordance with Instruction 7570-1. All other applications should meet the following requirements:

(1) *Required forms*—(i) *OEO Form 419.* Summary of Work Program and Budget (See OEO Instruction 6710-1) (Note: Goals and Activities must be consistent with the standards of effectiveness for section 222(a)(12) projects and the General Standards for Title II Programs outlined in CSA instruction 7850-1a and Form 419 must reflect these standards).

(ii) *OEO Form 25.* Program Account Budget (See OEO Instruction 6710-1).

(iii) *SF-424 (Complete Sections I and II).* Federal Assistance (See CSA Instruction 6710-3a).

(iv) *OEO Form 25a.* Program Account Budget Support Sheet (See OEO Instruction 6710-1).

(v) *OEO Form 301.* Summary of Grant Application (See OEO Instruction 6710-1) For new grantees only.

(vi) *CAP Form 5.* Application for CAP-Community Information (See OEO Instruction 6710-1) For uncapped areas except for CDCs funded under Title VII.

(vii) *CAP Form 84.* Participant/Characteristics Plan (See OEO Instruction 6710-1) Require for uncapped areas except for CDCs funded under Title VII.

(viii) *CAP Form 11.* Assurance of Compliance with Regulations under Civil Rights Act (for new grantees only).

(ix) *OEO Form 394.* Checkpoint Procedure for Coordination. (Note: This is optional and may be used by the funding official under circumstances detailed in CSA Instruction 6710-3a).

(x) Narrative Proposal (See Section b, below).

(2) *Contents of narrative proposal.* The narrative proposal should include

a brief narrative of each energy project in terms of:

(i) Description of problems addressed and the numbers affected, as reflected in Building Weatherization Plan and Energy Data Form, where available.

(ii) Past efforts in this project area and capacity to expand those efforts.

(iii) Given local community priorities, why this proposed solution is both feasible and most relevant.

(iv) Non-CSA resource opportunities available for this project include coordination with other Federal agencies such as HUD, EDA, Title X, FmHA, CETA, AoA, RSVP, Title XX Emergency Assistance for families under HEW, and mobilization of state and local resources.

(v) Projected results for each project effort with a unit cost estimate where appropriate.

#### § 1061.30-13 Reporting requirements.

(a) To avoid duplication of reporting procedures, CSA is establishing a uniform data collection and reporting system for all energy conservation activities. In addition, selected grantees and agencies may from time to time be requested to submit additional project information.

(b) Each funded grantee and delegate agency will be required to submit to the appropriate CSA Regional Office two copies of the Energy Data Form quarterly, based upon the grantee's or delegate agency's program year and concurrently with the submission of CSA forms 315 and 315a. Energy Data Forms are to be submitted to the appropriate Regional Office by the 20th day following the end of the report quarters. In the case of statewide grantees, or other grantees which delegate to more than one delegate agency, Energy Data Forms must be completed by each administering or delegate agency for their project and target area, and submitted concurrently with that agency's CSA Forms 315 and 315a. Each funded grantee will also be required to submit to the appropriate Regional Office on a monthly basis, by the tenth day of the succeeding month, two copies of the completed Building Weatherization Plan

for each dwelling on which work has been carried out during the month.

NOTE: To comply with the Privacy Act of 1974, Pub. L. 93-579, grantees should delete name and address of householder from the Building Weatherization Plan on copies submitted, making sure that a job number is assigned to each Plan.

#### § 1061.30-14 Additional requirements.

(a) *Administrative costs.* All program funds under section 222(a)(12) are subject to a limitation of ten percent for administrative costs as defined in OEO Instruction 6807-1.

(b) *Evaluation.* It is anticipated that the evaluation of energy programs will be twofold in nature. The first will be self-evaluation by the funded grantees, as required in OEO Instruction 7031-1. The second will be national in character and based on the data to be reported in accordance with Paragraph 11.

(c) *Checkpoint coordination.* Applicants must follow the Project Notification and Review System procedures outlined in CSA Instruction 6710-3a. Exception: Applications or portions of applications for training and technical assistance, research and evaluation.

#### Subpart 1061.31—Emergency Energy Conservation Program (CSA Instruction 6143-2)

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 41 FR 52876, Dec. 2, 1976, unless otherwise noted.

#### § 1061.31-1 Applicability.

This subpart is applicable to all grantees (or administering agencies) receiving financial assistance under Title II, section 222(a)(12) of the Community Services Act of 1974 when such assistance is administered by the Community Services Administration.

#### § 1061.31-2 Definitions.

(a) "Elderly" means persons who are sixty years of age or older.

(b) "Seasonal Farmworker" shall mean a person who during the preceding twelve months worked at least 25 days in farm work and worked less than 150 consecutive days at any one

## § 1061.31-3

establishment. "Seasonal Farmworker" includes both migratory and nonmigratory farmworkers, but does not include nonmigratory individuals who are full-time students or supervisors or other farmworkers.

(c) "Migrant farmworker" shall mean a seasonal farmworker who performs or has performed during the preceding twelve months agricultural labor which requires travel such that the worker is unable to return to his/her domicile (accepted place of residence) within the same day.

(d) "Handicapped" means those individuals who meet the definition of "handicapped" individuals as defined in section 7(6) of the Rehabilitation Act of 1973, as amended, or who are under a disability as defined in section 1614(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Act of 1970, as amended, or who are receiving benefits under Chapter 11 or 15 of Title 38, United States Code.

(e) "Indian Tribe" means any tribe, band, nation, or other organized group or community of Indians including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92-203; 85 Stat. 688) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

## § 1061.31-3 Purpose.

The purpose of this subpart is to require grantees who conduct projects under section 222(a)(12) to periodically submit CSA Form 488 Energy Data Form. This form will accomplish the following:

(a) It will provide CSA with a quarterly picture of grantee provision of services through eligible activities in Energy programming, as defined in CSA Instruction 6143-1a, with data on services to significant populations, indication of known universe of need, and an estimate of planned activities for the next quarterly reporting period;

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(b) It will provide a quarterly financial profile of grantee energy programming including all relevant financial data needed to assess the grantee's fiscal position.

## § 1061.31-4 Policy.

Each grantee conducting projects under Section 222(a)(12) of the Community Services Act shall submit CSA Form 488, Energy Data Form, to CSA on a quarterly basis.

## § 1061.31-5 General instructions.

(a) *When to Report.* CSA Form 488 (EDF) shall be submitted quarterly based on the grantee's program year, and in conjunction with the submission of CSA Forms 315 and 315a. For example, if the program year starts on February 1, EDF reports would be prepared for the quarters ending April 30, July 31, and October 31, and would be due in the appropriate offices 20 days after each of the quarterly ending dates.

(b) *Reporting delegate agency* (administering agency) data. Each delegate or administering agency shall submit a completed CSA Form 488 to its grantee who, in turn, shall submit a consolidated report to the funding office(s) as required above.

(c) *Number of copies to prepare.* Each grantee shall prepare sufficient copies of CSA Form 488 (EDF) for each quarter of a program year to make the distribution shown below.

(d) *Where to send reports.* (1) Each grantee shall submit 2 copies of CSA Form 488 to the funding office from which support for its program is derived.

(2) Grantees receiving support from more than one funding office, shall send 2 copies to each.

(3) Timely and accurate completion of the Energy Data Form shall be a factor in assessing grantee capability and performance in energy programming.



§ 1061.31-6 Detailed instructions<sup>1</sup> for completing CSA Form 488 (EDF).

(a) *Section I: Identifying information.* (1) *Name of grantee (or administering agency).* Self-explanatory.

(2) *Staff assigned to energy.* Enter the numbers of full and part-time staff engaged in energy programming during the quarterly reporting period. Include subsidized labor, such as CETA or Title X workers, but not volunteers.

(3) *Quarter ending (month and year).* Enter the appropriate number of the month ending the quarter, and last 2 digits of the calendar year. (For example, a report for the quarter ending April 30, 1976 should be identified as: 04/76.)

(4) *Grantee No.* Enter five-digit number assigned by CSA to each agency. It should not include action numbers or fund source code letters.

(5) *State.* State identification should be reported as the two-letter postal abbreviation.

(6) *Service area.* If the geographical area in which energy activities are carried out is the same as the CAA-coverage area, check the space in front of that phrase. If, in addition you provide energy services to some non-CAA areas, that space should be checked, and the non-CAA areas should be listed.

(b) *Section II: Services.* (1) The ability to report the specialized information requested in the following categories depends on the accuracy of a grantee's intake system. Many grantees have devised locally efficient intake forms that provide us this kind of information. If, however, you have not devised such a system, you may wish to take advantage of other grantees' experience and use the Optional Core Intake Form derived from that experience. Such forms can be supplied by your Regional Energy Coordinator.

(2) *Total services.* Enter the total numbers served for each of the eligible activities carried out by the project during the reporting period. (For ex-

ample, a grantee operating a weatherization project component and a crisis intervention service would enter the total number of houses weatherized, e.g. 100, in the block (A) and the total number of clients served in the crisis intervention component in block (B) e.g. 20. If no other energy activities were carried out, no other numbers would appear in this horizontal row.)

Under Total Services you will find five categories of special populations to whom the services may have been provided. The categories are not mutually exclusive, so they may add up to more than the total services figure. If, for instance, a household served had residents that were both elderly and handicapped, that household would appear in both 1.A. and 1.C.

(3) *Applicants on file.* Report on the number of requests for services of each type accumulated by the project, but not yet served. (If, for example, the 100 houses weatherized this quarter were the first 100 to be done out of a total of 1000 requests, the applicants on file, but not yet served would remain at 900.)

(4) *Activities planned next quarter.* Estimate of services planned for the upcoming quarter in each of the eligible activity areas carried out by the grantee. (This figure should be a reasonable and realistic estimate of the planned activities for the subsequent quarter's effort, and should bear a logical relationship to the anticipated expenditures shown on CSA Form 315. For example, a grantee anticipating the addition of Title X workers during the next quarter might show a substantial increase in planned weatherization activities, while a grantee facing the onset of winter might plan that fewer units could be weatherized. In either case, the estimate of services planned should be as accurate as the current situation permits.)

(5) *Section III: Financial information.* Report on each category of funds expended during the reporting period by source of funds to carry out the services shown in Section II. For example, if the weatherization of 100 houses is shown in Section II, the sources of funds for that activity should appear in the Section III column under weatherization. Suppose

<sup>1</sup>The CSA Form 488 (EDF) published at 41 FR 42876, Dec. 2, 1976, is not carried in this volume and is available from Community Services Administration at 1200 19th Street, Washington, D.C. 20506.

the total amount spent to weatherize those 100 houses was as follows:

- \$10,000 of Section 222(a)(12) money.
- \$10,000 in FmHA loans.
- \$5,000 of Title X labor.
- \$5,000 of CETA labor.
- \$1,000 HCD Title I.
- \$500 local United Fund contribution.

Each of these \$ amounts should appear as an identified source of funds in the weatherization column of Section III, as shown below:

The final horizontal row on the page should be the total amount of funds contributed from all sources to carry out the activities reported above.

**NOTE:** There are many possible sources of Federal, State, local and private funds which have not been spelled out. However, use additional spaces provided in Section III to identify sources from which you have received funds other than those preprinted.

(6) *Section IV: In kind contributions.* Report non-monetary contributions used by the grantee in conducting its program during the quarterly reporting period. For example, if the funds expended on weatherization were supplemented by 500 man-hours of Project Mainstream labor, 50 donated storm doors, and free transportation of those storm doors to the job-sites, these in-kind contributions should be detailed as shown below.

#### Subpart 1061.50—Community Food and Nutrition Programs (CSA Instruction 6132-2a)

**SOURCE:** 45 FR 33789, May 20, 1980, unless otherwise noted.

##### § 1061.50-1 Applicability.

This subpart is applicable to all grants and contracts and cooperative agreements funded under section 222(a)(1) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

##### § 1061.50-2 Definitions.

(a) *Program.* The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specific activities. Example: CSA's Community Food and Nutrition Program.

(b) *Project.* The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The School Breakfast Expansion Campaign of the Milwaukee CAP.

(c) *Limited Purpose Agency.* An organization or agency funded under sections 221 or 222 of the Act to conduct a specific project or projects, rather than the broad spectrum of projects conducted by a CAA. Limited purpose agencies are not subject to the requirements for local government designation and comprehensive community representation applicable to CAA's.

(d) *"Un-capped Area".* An "un-capped" area is any geographical area not officially served by a community action agency. An area officially served by a CAA is that area designated by the local government and recognized as such by CSA.

(e) *Catalytic Activity.* According to the dictionary, a catalyst is "a person or thing acting as a stimulus in bringing about or hastening a result". In this rule, "catalytic activity" means an activity which, through a modest investment of CFNP staff time and money, sets in motion a process or series of events which results, for low-income persons, in benefits that are far-reaching and whose value significantly exceeds the cost of the original investment [See Appendix A, for further clarification].

(f) *Direct Service Delivery.* One-on-one activity (for example, outreach activity) whose purpose is to provide goods or services directly to low-income individuals or families. The provision of services can be catalytic or non-catalytic activity. It is catalytic if it triggers a process that is carried forward by the individual, either on his own or with the assistance of groups or agencies other than the CFNP project. (See Appendix A, for additional clarification.)

(g) *Advocacy.* According to the dictionary, an *advocate* is "one who pleads the cause of another" or "defends or maintains a cause or proposal." In this rule, advocacy means a type of catalytic activity which is directed at institutions or at the general

public on behalf of low-income individuals in order to insure that, in the area of food and nutrition, the views of such individuals are heard, their rights are observed, the benefits to which they are entitled are provided, and their needs are met (to the extent possible) by the institutions which have the ability or responsibility to meet those needs. Successful advocacy can bring about either *institutional change* (a change in a law, regulation, policy, procedure, behavior or attitude affecting the low-income population) or a *mobilization of additional resources* (whether they be dollars or in-kind services) from public or private sources to support food and nutrition programs for the low-income population. (See Appendix A, for further clarification.)

(h) *Monitoring*. Monitoring is a variety of advocacy. To "monitor" is to "observe critically". To monitor a program operated by another federal or state agency means to *observe critically* that program; to gather relevant information about its operations in order to make sure that it is adhering to relevant statutes and regulations in its delivery of services to low-income families and individuals; and where there are problems, to bring them to the attention of the administering agency and to assist that agency in finding a solution. (See Appendix A, for further clarification.)

(i) *Anti-hunger Coalition*. An anti-hunger coalition is an alliance of various individuals, groups and organizations whose purpose is to serve as an advocate for the poor in addressing (1) a broad range of problems and issues in attempting to alleviate hunger and malnutrition among the poor or (2) a narrow range of such problems and issues (e.g., the operation of the WIC program) over a wide area (e.g., throughout a whole state). A coalition may include such groups as: Community Action Agencies, Community Food and Nutrition grantees, the poor (or other organizations representing them), churches, foundations, private organizations serving the poor, etc.

#### § 1061.50-3 Purpose of subpart.

This subpart sets forth CSA's policy for the Community Food and Nutri-

tion Program (CFNP) authorized under section 222(a)(1) of the Economic Opportunity Act of 1964, as amended. It discusses the purposes and categories of activities, participant and applicant eligibility criteria, application procedures and reporting requirements. The Appendices provide additional information relating to the meaning of certain terms, general policy, rating and ranking criteria, and addresses and names of key contact persons for CSA Regional Offices and migrant conduits.

#### § 1061.50-4 Introduction.

(a) Section 201(a)(1) of the Economic Opportunity Act of 1964 as amended states that the basic purpose of all Title II programs including the Community Food and Nutrition Program, is " \* \* \* to *stimulate* a better focusing of all available local, State, private and Federal resources upon the goal of enabling low-income families and low-income individuals \* \* \* to *become fully self-sufficient*" (emphasis added).

(b) This statement sums up CSA's historic mission which has been to serve as a *stimulator* or *catalyst* of activities conducted by other public and private institutions rather than as a provider of services in competition with these institutions. CSA's limited funds make it necessary, in any event, for CFNP projects to limit their involvement in non-catalytic direct service delivery and to function primarily as advocates and catalytic agents.

(c) A second important point made in the statement quoted above is that the catalytic activity of Title II programs, including the CFNP, should be directed to helping the poor escape the cycle of poverty. The relevance of the CFNP to this objective is underscored by a report entitled "Dietary Goals for the United States" (2nd Edition) issued in February 1978, by the U.S. Senate's Select Committee on Nutrition and Human Needs. According to the report, an inadequate diet is a principal cause of six of the leading killer diseases—the six being diabetes, strokes and hypertension, heart disease, some cancers, arteriosclerosis and cirrhosis of the liver. An inadequate diet is also one of the factors



which leads to unemployability and chronic dependence on public assistance programs. Hence the importance of a concentrated attack on the problem of malnutrition among the poor.

§ 1061.50-5 Policy.

(a) Section 222(a)(1) of the Economic Opportunity Act authorizes: "A program to be known as Community Food and Nutrition designed to provide, on an emergency basis, directly or by delegation of authority pursuant to the provisions of Title VI of this Act, financial assistance for the provision of such supplies and services, nutritional food-stuffs, and related services as may be necessary to counteract conditions of starvation or malnutrition among the poor. Such assistance may be provided by way of supplement to such other assistance as may be used to extend and broaden such programs to serve economically disadvantaged individuals and families where such services are not now provided."

(b) In its effort to "supplement and extend and broaden" other Federal food programs, the CFNP must not lose sight of the essentially *catalytic* nature of CSA's mission referred to in § 1061.50-4 of this subpart. Funds should be used primarily as seed money or in ways that have a multiplier effect, not for duplicative or long-term feeding programs. The emphasis on catalytic activity does not preclude the use of CFNP funds, in emergency situations, for the direct delivery of foodstuffs and related services (e.g., food vouchers or food boxes) so individual families within CSA poverty guidelines who are insufficiently served or not served at all by other programs (see 1061.50-7(d)(4) below). Benefits received under the CFNP shall not be considered as income for purposes of determining eligibility for other federal programs.

(c) Each CFNP project will be expected to include *advocacy* as an *essential* and *integral* element of both its design and implementation. While an applicant may select the program category (Access, Self-Help, Food Supply, Crisis Relief, and Nutrition and Consumer Education) which best meets the needs of the poor in the community served, the element of ad-

vocacy should always be a part of whatever category is selected. Advocacy efforts should focus upon articulating the views and needs of the poor to the public at large but, more particularly, to those institutions and organizations which have the ability or responsibility to serve the poor. Advocacy efforts should not only include speaking *on behalf of the poor*, but helping the poor to articulate their own needs and to participate in activities which are designed to assure that the benefits to which the poor are entitled are provided. Advocacy should be aimed at initiating new programs to benefit the poor as well as improving and expanding existing ones.

(d) All CFNP projects will be expected to conform to as many of the purposes of Title II programs as possible (listed below in § 1061.50-6 of this subpart). Subpart § 1067.4 of this chapter requires that each project contribute to the achievement of one or more purposes. CSA is requiring that CFNP grantees meet at least three general purposes and one specific purpose of Title II programs. Applicants are advised that the rating criteria (see Appendices B through F) include three of the six purposes.

§ 1061.50-6 Purpose of the program.

(a) The following are the purposes of Title II programs, including the CFNP, found in Sections 201(a) and 222(a) of the Economic Opportunity Act of 1964 as amended and reflected in CSA's general standards of effectiveness:

(1) *Planning and Coordination.* Strengthened community capabilities for planning and coordination so as to insure that available assistance related to the elimination of poverty can be more responsive to local needs and conditions;

(2) *Improvement of Service Delivery.* Better organization of services related to the needs of the poor;

(3) *Maximum Feasible Participation.* Maximum feasible participation of the poor in the development and implementation of all projects designed to serve the poor;

(4) *Mobilization of Resources.* Broadened resource base of programs

directed to the elimination of poverty so as to include all elements of the community able to influence the quality and quantity of services to the poor;

(5) *Innovative Approaches.* Greater use of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing resources;

(6) *Maximum employment Opportunities.* Employment of the poor, including opportunity for further occupational training and career development, in the programs and projects administered to serve the poor.

(b) The following are legislatively-mandated purposes of the Community Food and Nutrition Program (Specific Standards of Effectiveness):

(1) *Improvement in the nutritional status of the target population.*

(2) *Reduction in hunger among the target population.*

#### § 1061.50-7 Program categories.

The categories eligible for funding under the Community Food and Nutrition Program are described below and are listed in priority order.

(a) *Access.* Access activities are focused on the public sector and are aimed at improving the opportunities for low-income people to gain access to, and participate in, food and nutrition programs sponsored by the federal, state and local governments and at making sure that these programs operate effectively, efficiently and fairly. They also seek to involve the poor in shaping public policies which have an effect upon the nutritional status of the poor. Activities eligible for funding under the "access" category include, but are not limited to:

(1) The monitoring of programs conducted by other agencies and in particular monitoring the implementation by USDA and state and local governments of the Food Stamp Act of 1977, in order to insure compliance with relevant federal and state statutes and regulations;

(2) Seeking changes in federal and state statutes and regulations to insure a more equitable distribution of food and nutrition benefits to the poor;

(3) Stimulating through consultation with parents, school administrators and other officials, the establishment or expansion of various federally funded food programs such as; the School Breakfast and School Lunch Programs, the WIC Program, the Summer Food Service Program for Children, the Nutrition Program for the Elderly, etc.

(4) Participating with a state in the development of state plans, certification manuals, etc., for food and nutrition programs;

(5) Building coalitions to make possible community input into the improvement and implementation of programs which improve the nutritional status of low-income persons;

(6) Initiating, or stimulating the formation of, community education programs aimed at apprising low-income persons of their entitlements under federal and non-federal food programs;

(7) Stimulating efforts to provide the poor with assistance in prescreening and application procedures and with adequate representation in administrative hearings, etc.;

(8) Initiating or stimulating the formation of feeding programs (e.g., Meals on Wheels) which are urgently needed and are not being provided in the community, on the condition that significant mobilization of other resources and early spin-off of the project to a more appropriate agency is included in the application;

(9) Designing and carrying out strategies for obtaining matching funds for new and existing projects supported from CFNP funds, and for spinning off such projects to other agencies (e.g. projects funded under HEW and USDA such as Title XX or food stamp outreach);

(10) Catalyzing an expanded and more effective outreach program on the part of other agencies; (See discussion on outreach in Appendix A).

(b) *Self-Help.* Self-Help activities are those which are aimed at improving the ability of low-income people to produce, preserve, purchase or market their own foodstuffs. These foodstuffs may and often do supplement those provided by federal feeding programs or by private sector institutions.

**NOTE:** Applicants for Self-Help projects which by design should ultimately become self-sustaining, e.g., food co-ops, buying clubs, and canneries, should include in their applications specific plans for the eventual phase-out of CFNP funding.

Activities eligible for funding under this category include but are not limited to:

(1) Conservation, distribution and utilization of foodstuffs, such as:

(i) Organizing family and community gardens;

(ii) Organizing food co-ops and buying clubs (See discussion in Appendix A on the National Consumer Cooperative Bank);

(iii) Establishing greenhouses, canneries, etc.;

(iv) Organizing food gleaning campaigns (Note: A number of states have passed legislation providing a tax benefit for small unincorporated farmers who donate excess produce to organizations serving the low-income population, while similar legislation is being proposed in Congress).

(v) Organizing efforts in which the food produced by small local farmers is purchased and utilized in other federal feeding programs, e.g., School Breakfast, School Lunch, Day Care, WIC, Summer Feeding, etc.;

(vi) Initiating "farmer to market" projects in which the food produced by small farmers is made available to the poor at lower prices;

(vii) Undertaking efforts to allow small farmers and food co-ops to accept, and non-profit organizations serving the poor to issue, food stamps;

(2) Activities which support self-help projects such as:

(i) Mobilizing the resources of state agriculture departments, land grant colleges, co-op extension services, USDA (e.g., the Agricultural Stabilization and Conservation Service), VISTA, CETA, etc., for obtaining seeds, plants, land, water and information;

(ii) Cooperating with land grant and other colleges to provide more assistance to small-scale (even part-time) growers, etc.;

(iii) Promoting the utilization of unused federal, state, and local land for food production by the poor.

(c) *Food Supply.* The category of Food Supply denotes activities aimed

at the private sector whose purpose is to involve the poor more directly in the food distribution process, to encourage the food industry and other elements of the private sector to become more involved in and supportive of efforts to help solve the nutritional problems of the poor, and to make more nutritious food available at lower prices. Activities eligible for funding under this category include, but are not limited to:

(1) Developing and seeking to get adopted innovative proposals to increase the amount of food available to the poor;

(2) Seeking changes in laws and regulations that impede the involvement of the poor in food production, processing, distribution, etc.;

(3) Organizing consumer action relating to public and private sector food policies and food sales, e.g., mobilizing public and private support for the elimination of food sales taxes;

(4) Establishing food banks which serve as clearinghouses for food donated by private industry for redistribution to the poor and encouraging food producers, processors, wholesalers and retailers to contribute food to such banks;

(5) Encouraging food retailers to join with city governments and community-based groups to bring supermarkets back to the inner-city through mutual development ventures, special tax and/or other municipal incentives;

(6) Enlisting food retailers in conducting training programs to sensitize food store employees to the needs and problems of food stamp shoppers so as to reduce the intimidation and inconvenience often caused such persons;

(7) Encouraging food wholesalers and retailers to hire the poor;

(8) Encouraging industry to help limit unnecessary cost to consumers by adopting more responsible packaging and advertising practices, such as:

(i) Making available a variety of inexpensive, quality foods in order to promote optimum nutrition among the poor;

(ii) Making available food in smaller packages at more reasonable prices for the elderly, single and single parent households;



(9) Getting retailers to adopt and support innovative approaches to marketing, such as mobile markets, transportation to existing outlets for those who need it, stocking locally-produced foods, etc.;

(10) Enlisting the support of retailers for the establishment of consumer monitoring and advisory panels which reflect the needs and opinions of all sectors of the community.

(d) *Crisis Relief*. To improve community crisis relief mechanisms. Activities eligible for funding under this category include but are not limited to:

(1) Organizing food pantries and emergency food box projects;

(2) Negotiating for improvement in public welfare systems for distributing, in natural disasters and widespread emergency circumstances, Emergency Food Stamps, WIC packages or vouchers, USDA commodities, local food bank resources, etc. Among federal agencies the U.S. Department of Agriculture, in conjunction with the Federal Disaster Assistance Administration, is responsible for the delivery of foodstuffs to needy households in disasters and other wide-spread emergencies.

(3) Assisting communities to improve their crisis relief programs so that those most in need will receive swift relief;

(4) Providing foodstuffs directly and/or issuing food vouchers, but only if at least one of the following conditions is satisfied:

(i) There is a temporary individual or family emergency and timely help is not forthcoming from other agencies or,

(ii) The provision of relief is a catalytic effort which includes a plan to establish a community-based entity which will provide such services in the future, or a plan to transfer the activities, within a specified period of time, to an agency which already has an assigned responsibility for providing foodstuffs, vouchers, etc. to the poor. A commitment from such an agency to take over the project should be included in the application, if possible.

(e) *Nutrition and Consumer Education*. To improve, through catalytic activity in the area of nutrition and consumer education, the ability of low-

income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior foods and to prepare and preserve these foods in ways that minimize the loss of nutrients. Activities eligible for funding under this category include but are not limited to:

(1) Developing and demonstrating new and more effective techniques for communicating nutritional information to the poor;

(2) Stimulating the establishment by other agencies or institutions of educational programs to acquaint the low-income public with the potential benefits of altering food preparation and eating habits in the light of the "Dietary Guidelines for Americans" promulgated recently by USDA and DHEW. (Copies of a pamphlet containing these guidelines can be obtained from the Home Economic Extension Agent in your county's Agricultural Extension Office);

(3) Stimulating the establishment of educational programs to improve the ability of low-income individuals and families to understand written guidance on food selection and to make comparisons between foods based on nutrition labeling and price;

(4) Engaging in advocacy efforts to induce federal agencies such as USDA and HEW to design new (and redesign existing) nutrition and consumer education programs so they are more responsive to the needs of low-income consumers;

(5) Devising and carrying out strategies to insure that state nutrition education plans address the needs of children, teachers, and food service workers in schools and low-income communities and that advisory councils set up to oversee state nutritional education programs include representatives of the poor;

(6) Engaging in advocacy efforts to induce such private organizations as the American Dietetic Association, American Heart Association and American Diabetes Association etc., to direct more of their nutrition education to the poor, and to coordinate such activities with CSA's CFNP network!

(7) Engaging in research to determine the status and quality of nutrition efforts aimed at the poor, identify gaps in those efforts, and recommend ways in which CSA, CAA's and CFNP grantees should be involved in nutrition education.

§ 1061.50-8 Eligible participants.

(a) All activities supported from CFNP funds must be targeted on low-income individuals and families as defined in CSA Income Poverty Guidelines (See § 1061.2 of this chapter). It is important to stress this since in the case of some programs, such as the Food Stamp Program and the National School Lunch Program, the persons eligible for benefits form a larger group than those who fall within CSA poverty guidelines. In such cases, the rule of thumb should be that a *majority* of the individuals or families served are within CSA guidelines.

(b) Individuals are eligible to participate upon a self-declaration of need without the delay of a "means test" or income investigation. Self-declaration of need makes possible immediate assistance for those suffering from hunger and in danger of malnutrition.

§ 1061.50-9 Eligible applicant.

(a) *General Community Projects.* (1) Section 222(a) of the Economic Opportunity Act states that the Director shall provide financial assistance "... in a manner that will encourage, wherever feasible, the inclusion of assisted projects in community action programs ..." (emphasis added). In addition, Section 222(a)(1) of the Act requires that the Director carry out the CFNP "... in a manner that will insure the availability of ... supplies and services, nutritional foodstuffs and related services *through a community action agency where feasible*, or other agencies and organizations if no such (community action) agency exists or is able to administer the program) ..." (emphasis and parentheses added).

(2) Therefore Community Action Agencies (CAA's) will be regarded as *prime sponsors* of projects utilizing general community funds. Any other organization desiring to operate a project in a geographical area served by a

CAA must do so as a delegate agency of the CAA. If such organizations are unable to work out a delegate agency agreement with the CAA, then they may apply *directly* to the appropriate Regional Office of CSA. However, such applications will be considered *only if* the CAA does not submit a proposal, or submits a proposal which is not funded. (The deadline for submission of applications by prospective delegate agencies outlined in paragraph 2 of this chapter do not apply to this program.)

(3) Other public and private, non-profit organizations, including SEOO's and CAP Associations, which meet CSA's general eligibility criteria may apply directly to the appropriate CSA Regional office for general community funds to operate projects in geographical areas not served by CAA's ("uncapped areas").

NOTE: CAA's are not precluded from operating projects outside their officially designated boundaries where they are otherwise legally permitted to do so.

Where no statewide anti-hunger coalition exists, a CAP Association may apply for General Community Funds to initiate and establish such a coalition. The CAP Association must, however, assure substantive participation by the poor and anti-hunger groups/organizations in the planning, implementation and evaluation of the project. This may be done by (i) including representatives from these groups on the applicant's governing board, (ii) establishing an advisory committee which includes representatives of the poor and anti-hunger organizations, or (iii) establishing a delegate agency to administer the project whose governing board includes representatives of Community Action Agencies, the poor, and anti-hunger organizations (See § 1062.200-4 of this chapter).

(4) State Economic Opportunity Offices (SEOO's) and CAP Associations may not apply as conduits for other applicants when the purpose or effect of such an arrangement is to allow those applicants to avoid the competitive process. As an exception to CSA's general policy, SEOO's and CAP Associations may apply as a conduit for other applicants within a state where

the following conditions are met: (i) The applicant has CSA's written advance approval, (ii) the low income residents of the area to be served were involved in the planning of the project, and (iii) two or more of the following activities are carried out on a statewide basis: (A) Advocacy, (B) improved planning and coordination, and (C) mobilization of a broader range of resources. In such a case the complete work programs and budgets of the delegate applicants must be submitted to CSA along with the conduit application. These applications will then be reviewed, rated and ranked on a competitive basis like any other application, and they must receive a minimum score of 65 points in order to be considered eligible for funding. Likewise the work program and budget of the conduit will be rated and must receive a minimum score of 65 points.

(5) CAA's and anti-hunger groups are strongly encouraged to work together where possible. This can take the form of a CAA's delegating part or all of its work program to an anti-hunger group, or vice versa; close and systematic coordination on the part of both groups in the planning, implementation and evaluation of CFNP projects; and *close collaboration in the development of state anti-hunger strategies*. The formation of such alliances contributes to at least one of the general standards of effectiveness (planning and coordination) and in most cases will contribute to more.

NOTE: CAA's must indicate in their applications the efforts which have been undertaken to involve various community groups and organizations—including anti-hunger organizations—in the planning and implementation of their proposed activities. In the rating and ranking of applicants points will be given to applicants who furnish evidence that such coordination has taken or will take place.)

(b) *Special Support Projects*. (1) Public and private non-profit organizations which meet CSA's eligibility criteria—other than CAA's, SEOO's, and CAP Associations—may apply for special support funds.

(2) Special support projects must be designed to have a *broad impact* on the problems of hunger and malnutrition among the poor, i.e., an *impact*

that extends beyond the boundaries of particular communities. The objective of special support projects is to assist in the development, coordination and expansion of food and nutrition programs for the poor and/or engage in advocacy efforts to improve those programs on a statewide or multi-state basis.

(3) Special support projects must relate to one or more of the five program categories outlined in § 1061.50-7 of the subpart. Special support activities may include but are not limited to:

(i) Developing or strengthening statewide or multi-state anti-hunger coalitions and task forces;

(ii) Monitoring and interpreting changes in relevant federal and state laws, regulations, and procedures;

(iii) Developing or improving statewide food and nutrition information centers or clearinghouses;

(iv) Initiating and/or stimulating the provision by others (e.g., grantees of the National Legal Services Corporation) of legal services aimed at improving the delivery of food and nutrition services to the poor.

(v) Providing assistance to low-income individuals or their representatives to attend meetings and conferences on food and nutrition issues, etc.

CSA, as a matter of policy, encourages the establishment of statewide anti-hunger coalitions which address a broad range of hunger problems and issues. Therefore, in making funding decisions on applications for special support funds, CSA will give preference to such coalitions over other types of special support projects. Special support applicants are reminded that they must meet CSA's requirements regarding participation of the poor (See § 1060.1 of this chapter). In addition they must substantively involve Community Action agencies in the planning, implementation and evaluation of the project. This can be accomplished by having CAA representatives on their governing boards or establishing advisory committees which include CAA representatives.

(4) Applicants must show evidence of successful experience and competence in carrying out the kinds of activities described above. *In addition, appli-*



cants must indicate on their applications how CAA's have been involved in the planning of the projects and how they intend to coordinate their proposed activities with: CAA's in or adjacent to the areas they propose to serve; other CFNP grantees and the SEEO in the state(s) where the project will operate.

(c) *Regional Training and Technical Assistance (T&TA) Projects.* (1) Public and private non-profit organizations and agencies which meet CSA's general eligibility criteria may apply for Regional T&TA funds. Regional T&TA providers may operate on either a regionwide or subregional basis.

NOTE: Applicants for T&TA funds may not serve as a conduit for, nor delegate portions of their work program to profit-making firms.

(2) Applicants for Regional T&TA projects must present in their applications a detailed statement of the following:

- (i) The kinds of T&TA they propose to deliver;
- (ii) How they intend to go about it;
- (iii) A timetable for the delivery of such;
- (iv) The results they expect to achieve; and
- (v) How they plan to evaluate results.

(3) T&TA applicants must indicate how they will assist CFNP grantees to achieve or carry out the major policy initiatives of the CFNP, such as:

- (i) Shifting the emphasis from service delivery to catalytic activity;
- (ii) Undertaking advocacy as a major component of each CFNP project;
- (iii) Effective techniques of mobilizing public and private resources; and
- (iv) Coordinating activities with other institutions and organizations involved in anti-hunger efforts.

(4) In the area of program planning and management, T&TA applicants must indicate how they will assist CFNP grantees in more precisely determining the nutritional problems and needs of low-income individuals, how to set priorities, establish realistic goals, design project strategies, and evaluate results.

(5) T&TA applicants must demonstrate in their proposals an under-

standing of the five program categories described in § 1061.50-7 of this subpart and an ability to assist CFNP grantees in carrying out the activities listed there. Applicants should have an expert knowledge of the various federal feeding programs (such as Food Stamps, School Breakfast, School Lunch, WIC, Day Care Food, Nutrition Program for the Elderly, etc.) and the ability to transfer such knowledge to CFNP grantees. Applicants should have prior successful experience in such activities as:

(i) How to organize coalitions and effectively conduct campaigns or other activities to initiate or expand the various federal feeding programs listed above;

(ii) How to stimulate the establishment of more effective outreach efforts by the agencies which administer these programs;

(iii) How to "monitor" such programs to assure their compliance with relevant statutes and regulations;

(iv) How to organize family and community gardens, food co-ops and buying clubs, etc. and assist them to become self-sustaining;

(v) How to train low-income residents to seek and obtain assistance from agencies which have a responsibility to serve them (such as agricultural extension services) or to speak on their own behalf in seeking benefits from agencies (e.g. Food Stamp "fair hearings");

(vi) How to help CFNP grantees engage in advocacy efforts to induce federal and state agencies to design new and redesign existing nutrition education programs so they are more responsive to the needs of low-income consumers; and

(vii) How to organize crisis relief mechanisms supported and sustained by a variety of resources in the community at large to meet the emergency needs of low-income individuals and families.

NOTE: This list is *illustrative* and not exhaustive of the fields of expertise which may be required of the T&TA provider.

(6) T&TA applicants must not only show evidence of successful experience and competence in carrying out the kinds of activities described above,

they must also indicate how they will coordinate their activities with the CSA Regional office, the SEOO's, special support projects and national T&TA providers.

(7) T&TA applicants must review the proposals of the CFNP grantees for whom the T&TA is being proposed and design their work programs so as to most effectively meet the needs of these grantees.

(d) *Headquarters Training and Technical Assistance (T&TA) Projects and Research and Demonstration (R&D) Projects.* (1) Public and private non-profit organizations or agencies which meet CSA's general eligibility criteria may apply for headquarters T&TA and R&D funds.

(2) Unlike regional T&TA projects, headquarters T&TA projects will focus on grantee needs that are common to a number of regions or require a national strategy. In addition headquarters T&TA projects may be required to address the needs of other projects administered directly from headquarters, e.g., migrant conduits.

(3) The objective of R&D projects is to develop new knowledge or demonstrate new hypotheses relevant to the solution of the problems of hunger and malnutrition among the poor. Activities proposed in applications for R&D funds should relate to activities described under the five program categories defined earlier in this subpart but should emphasize new and untried approaches to solving problems of hunger and malnutrition and potential solutions so as to have maximum impact on these problems nationwide.

(e) *Migrant Projects.* Farmworker-governed organizations which meet CSA's eligibility requirements may apply for funding under this category. Migrant conduits and other applicants proposing activities of a national or multi-regional scope will apply directly to CSA headquarters and will be exempt from the competitive process. Applicants proposing to operate local projects, and which meet CSA's eligibility criteria preferably farmworker-governed organizations), may apply as sub-contractors to the appropriate migrant conduit. Applicants applying as sub-contractors of the migrant conduits will follow the procedures out-

lined in § 1061.50-11 and § 1061.50-13 of this subpart. Their applications will be reviewed, rated and ranked by the migrant conduits on the basis of the criteria listed in Appendix D. The funding process will be competitive, with applicants with the highest scores being given funding preference.

NOTE: Applicants for local migrant projects will be required to achieve the minimum score of 65 points in order to be considered eligible for funding. However, CSA may waive this requirement where necessary in order to serve the most needy migrant populations.

(f) *Indian Projects.* Indian groups whose governance is controlled by the populations to be served are eligible to apply for Indian project funds. This includes Indian nations, tribes, bands, pueblos, or other organized groups or communities, including Alaskan Native villages as defined in the Alaskan Claims Settlement Act who are either indigenous to the United States or who otherwise have a special relationship to the United States, or a state, through treaty agreement, executive order, law, court order or administrative action of the Department of Interior, except as otherwise provided by Federal law. Urban Indian groups which meet the eligibility requirement stipulated in the first sentence of this subsection may apply for funds under this category. Applicants for Indian projects should submit their applications to the appropriate CSA regional office and should follow the application procedures outlined in § 1061.50-11 and § 1061.50-13 of this subpart. Their applications will be reviewed, rated and ranked according to the criteria in Appendix C and the funding process will be competitive, with funding preference being given to applicants with the highest scores. (Note: The CSA review panels for Indian projects will include Indians and Indian applicants will be required to achieve the minimum score of 65 points in order to be considered eligible for funding. However, CSA may waive this requirement where necessary in order to serve the most needy Indian populations.)

§ 1061.50-10 Funding.

(a) *Non-Federal Share.* The non-Federal share is waived for CFNP projects (see § 1068.20 of this chapter). However, grantees are expected to mobilize local and state resources throughout the life of a project.

(b) *Federal Share.* Federal share as matching funds granted under Section 222(a)(1) may be used to match USDA funds to support food stamp outreach projects, as well as nutrition projects for the elderly funded under Title XX of the Social Security Act as amended.

§ 1061.50-11 Application procedures.

(a)(1) *Required forms and documents.*

(i) SF 424: Federal Assistance (See 1067.10 of this chapter). This form serves two purposes: (A) It is used as a "notification of intent" to notify the A-95 Clearinghouses, sixty days in advance, of the applicant's intent to apply for a grant; (B) It is the transmittal document used to convey the application to the clearinghouses and CSA. Note: The Catalog of Federal Domestic number is 49.005.

(ii) OEO Form 395: Eligibility Documents (See subpart 1067.40 of this chapter).

NOTE: All applicants are required to have on the file with CSA the following documents in order to establish eligibility to receive CSA funds. Current grantees should check to make certain these documents are up-to-date, making changes and resubmitting where necessary. New applicants should submit them either prior to or along with the submission of their formal applications.

(A) Articles of Incorporation (See subpart 1067.80 of this chapter);

(B) By-laws or Rules of Organization (See subpart 1067.80 of this chapter);

(C) Personnel Policies and Procedures (See 1069.20 series of this chapter);

(D) Biographic Data on Key Staff (See § 1069.10 of this chapter);

(E) Statement of Accounting System (See § 1068.42 of this chapter);

(F) Current Bond (See § 1050 subpart C of this chapter)

(G) Participation of the Poor (See § 1060.1 of this chapter); include:

(1) List of Boards and Committees of Title II Programs (See § 1062 subpart J of this chapter);

(2) List of Policy Advisory Committee Members (LPA's Only—See § 1060.1 of this chapter);

(H) Applicant Certifications (CSA Form 301—New applicants only);

(I) Certification of Applicant's Attorney (OEO Form 393—New applicant's only—See § 1067.40 of this chapter).

(iii) Project Narrative (See § 1061.50-13(h), (i)).

(iv) OEO Form 419: Summary of Work Program and Budget (See § 1067.10 of this chapter).

(v) CAP Form 325 & 325a: Program Account Budget and Support Sheet (See OEO Instruction 6710-1).

(vi) CAP Form 84: Participant Characteristics Plan (See OEO Instruction 6710-1).

NOTE: Applicants are to list only those participants to be served by the proposed project and are reminded specifically that they are to list the number of elderly poor to be served.

(vii) OEO Form 394: Checkpoint Procedure for Coordination (*Optional*). Applicants are encouraged to use this form to indicate coordination linkages and agreements with local agencies. However, if the question of coordination is adequately addressed in the project narrative, the applicant need not include this form (See § 1067.10 of this chapter).

(viii) CSA Form 440: Program Progress Review Report (See Part 1050, Subpart I of this chapter).

NOTE: Although this form is not an application document, and not normally required with an application, CSA is requiring an updated Form 440 from applicants currently operating CFNP projects.

(2) *Additional forms required when delegating projects.*

(i) CAP Form 85: Administering Agency Funding Estimate (See OEO Instruction 6710-1).

(ii) CAP Form 87: Delegate Agency Basic Information (See OEO Instruction 6710-1).

(iii) CAP Form II: Assurance of Compliance with Civil Rights (See OEO Instruction 6710-1).



(iv) OEO Form 280: Agreement for Delegation of Activities (Self-explanatory). (See OEO Instruction 7570-1 Appendix C).

(b) *Clearinghouse Review* (A-95). Applicants are reminded that they must comply with the requirements of OMB circular A-95 (See § 1067.10 of this chapter), including the following:

(1) Applicants must, at least 60 days prior to the actual submission of their applications to CSA, notify the appropriate clearinghouses of their intent to apply. This is accomplished through the SF-424 which is synonymous with "notification of intent." In order to expedite clearinghouse review, applicants are encouraged to attach to the SF-424 a summary, not to exceed three pages, of the proposed project which includes a brief description of: (i) The planning process and those involved in it; (ii) The problem to be addressed and the number of poor and age groups the project will serve; (iii) The goals and *major* activities to be carried out; (iv) How the project will be coordinated with other organizations involved in anti-hunger efforts; and (v) Resources the project expects to mobilize.

**NOTE:** Applicants are requested to submit an informational copy of their notifications of intent to the appropriate CSA Regional or headquarters office. CSA will send application packets containing the necessary application forms to all applicants who submit copies of their notifications of intent to CSA.

(2) Where the clearinghouse, in response to the notification of intent to apply, indicates that it wishes to review and comment on the application, applicants should forward applications to the clearinghouse as soon as possible. Applicants are required to submit the comments of the clearinghouse along with their applications to CSA.

(3) Applicants proposing statewide projects need only submit their notification of intent to the state clearinghouse for review. Such applicants should indicate in writing to the state clearinghouse that their proposed project is statewide and will not be submitted to area clearinghouses. Applicants serving as conduits (other than migrant conduits) must submit the ap-

plications of their delegates or subgrantees to the appropriate area or state clearinghouses if those applications will be part of such conduits' application to CSA. Indian applicants who are part of a federally recognized tribal government or local subunit of such tribal governments are not required to submit their notifications of intent to area or state clearinghouses but are encouraged to coordinate with the appropriate clearinghouses. Migrant conduits must submit notifications of intent to their state and areawide clearinghouses. Local migrant organizations submitting applications to conduits as subcontractors or delegate agencies must submit their notifications of intent to appropriate state and areawide clearinghouses. Applicants may obtain clearinghouse addresses from the appropriate CSA Regional Office or, in the case of applicants for projects of national scope, CSA headquarters.

(4) Applicants proposing projects of a nationwide or multistate scope need only submit their proposal to the state clearinghouse in the state where they are located if the activities proposed will not result in a significant impact. If a significant impact is anticipated in a given state, then a notification of intent, plus the application, if desired by the clearinghouse, must be submitted to the appropriate state clearinghouse. Applicants proposing activities of a national scope and which have targeted specific states for on-going or intensive efforts should assume that such activities will have a significant impact and therefore must notify the appropriate state clearinghouse of their intent to apply.

(5) Applicants applying for funds to provide training and technical assistance for staff development and management improvement and evaluation are exempted from A-95 clearinghouse procedures. (See 1067.10-1 of this chapter).

(c) *Where to Apply.* According to category of project send applications to:

(1) General Community: Appropriate CSA Regional Office.

(2) Special Support: Appropriate CSA Regional Office.

(3) Regional T&TA: Appropriate CSA Regional Office.

(4) Headquarters T&TA: CSA Headquarters.

(5) Headquarters R&D: CSA Headquarters.

(6) Migrants Conduits: CSA Headquarters.

(7) Migrant Subcontractors: Appropriate Migrant Conduit (See Appendix H).

(8) Indians: Appropriate CSA Regional Office.

**§ 1061.50-12 Reporting Requirements.**

Grantees will follow the financial and project reporting requirements outlined in § 1050, Subparts H and I of this chapter, with the following exception: CSA is waiving the requirement as provided in § 1050 Subpart I of this chapter that CAA's submit progress reports of CFNP projects along with the 440 submitted for Program Account 01. For this program 440s will be submitted semi-annually based on the effective date of the CFNP grant, to the appropriate CSA regional or headquarters office (see Appendix G).

NOTE: CSA is required by statute to report on the number of elderly poor being served by CSA funded projects. Grantees are, therefore, directed to indicate in their Program Progress Reports (440) the number of elderly poor being served by the project.

**§ 1061.50-13 Current fiscal year application and review information.**

(a) *Timetable for accepting applications.* The deadline for the submission of applications by various categories of applicants are listed below. Applications postmarked later than the dates indicated for a particular category will not be accepted.

(1) Applications for General Community, Special Support, and Indian projects will be accepted from the date of the publication of this rule through July 7 1980. Migrant subcontractors or delegate agencies should contact the appropriate Migrant Conduit to ascertain the deadline for submitting their applications.

(2) Applications from Headquarters and Regional T&TA applicants for one year programs, beginning January 1, 1981 and ending December 31, 1981, will be submitted to the appropriate CSA office not later than October 31, 1980.

(b) *Two-year Programming.* (1) Beginning in FY 80, CSA is instituting two-year programming for the Community Food and Nutrition Program, that is, CSA will approve two-year work programs for applicants rather than one-year programs except as noted below in paragraph (3). Thus, there will be *one competition* for the selection of applicants *every two years*.

(2) The reasons for instituting two-year programming are: (i) To reduce the amount of time and work spent by both the applicant and CSA in the grant application and review process, (ii) to allow both the grantee and CSA to focus more attention upon the substantive work to be accomplished during the grant period, and (iii) to assure at least a two-year period of continuity for projects that cannot be accomplished within a twelve-month period.

(3) The institution of two-year programming does not apply to Headquarters and Regional T&TA applicants, and does not preclude other applicants from applying for a one year grant if a particular set of proposed activities can be accomplished during a twelve-month period and further funding from CSA will not be required.

(4) The procedures for applying for funds to operate two-year projects are the same as those for one-year grants with the following exceptions: (i) The applicant need submit only *one* Form 419 for the two-year project, with the goals, objectives and activities for the entire two-year project clearly delineated both in the Form 419, and in the project narrative; (ii) In column 14 on the Form 419, entitled "Time Table Program Year Quarter", "quarter" should be interpreted as a 6-months period, so that the columns headed "1st" and "2nd" will cover the first twelve months of the project while the columns headed "3rd" and "4th" will cover the second twelve months; (iii) The applicant need attach only one budget form (Forms 325 and 325a) covering the first year of the project, and must enter in Section II of Form 325 the dollar amount needed for the second year of the project; (iv) Column 17 of the 419 must indicate the amount of funds required for each

program category (program account); and (v) By June 30, 1981, the applicant must submit to the appropriate Regional office a new Form 325 and 325a for the second year of the project and, if there are any changes in the work program needed in the light of what happened in the first year of the project, an amended Form 419 should also be submitted.

(5) It is important to note that in approving applications for two-year programs CSA is neither making nor approving a two-year grant award since CSA cannot legally commit funds which have not been appropriated. The funding process for two-year programs will be as follows: CSA will fund the first twelve months from current fiscal year funds. The second twelve month funding will be awarded in the subsequent fiscal year, if and only if, the following conditions are met: (i) Congress appropriates sufficient funds to permit the second year of funding, (ii) the grantee's performance during the first twelve months has been satisfactory, and (iii) there is no change in Agency priorities. If the above conditions are met, then the grantee will be awarded the second year of funds *without* having to submit another application.

(6) In order to determine whether a grantee's performance has been satisfactory CSA will conduct an assessment through an on-site visit or a telephone conference in conjunction with a review of the grantee's year-end program progress report (Form 440).

(7) In the event that appropriations for the CFNP are reduced in FY 81, CSA will make a determination as to how to effect reductions in grantees' budgets for the second year and notify the grantees in writing of its decision. In the event that appropriations for the CFNP are increased, CSA will determine how the increased allocation will be spent and will publish its plan for spending this increase in allocation in the FEDERAL REGISTER.

(c) *Consortium Applications.* In order to foster cooperation among grantees and to permit the maximum use of limited funds, CSA will permit applicants for FY 80, where it is geographically appropriate within a sub-state area, to submit a single applica-

tion through a local Community Action Agency, or through any eligible non-profit organization consistent with the provisions of § 1061.50-9(a) (1) and (2) of this subpart. The applicant would then serve as the coordinator of CFNP activities within that geographical area. The permitting of consortiums among CFNP applicants merely formalizes a practice that already exists in some regions where such arrangements are known as "clusters".

(d) *Program Priorities.* The program priorities listed in § 1061.50-7 of this subpart are listed in priority order: (1) Access, (2) Self-Help, (3) Food Supply, (4) Crisis Relief and (5) Nutrition/Consumer Education (See Appendix A for further discussion of priorities).

(e) *Review Process.* The review process for applications, except Headquarters applicants, will be competitive, i.e., each application will be reviewed, rated, and ranked according to the criteria published in Appendixes B through F, with funding preference being given those applicants with the highest scores. Each applicant must score a minimum of 65 points in order to be funded. An applicant who scores more than the minimum points required *may* be funded, if funds are available, but funding is not guaranteed. The review process for all applications will be undertaken by the office to which applications are submitted as indicated in § 1061.50-11 of this subpart. Regional Offices and Migrant conduits' ratings, rankings and favorable or unfavorable funding decisions will be reviewed by CSA Headquarters before decisions become final. Applications from conduit organizations other than migrant conduits, must include copies of the applications from the sub-contractors or delegate agencies to which the conduit is redistributing CFNP funds.

(f) *Notification of Appeals.* (1) Each Regional Office will establish an appeals panel of not less than three members. Regional Offices will complete their funding decisions and mail notifications of results to all applicants within 30 working days of the deadline for submitting applications. The letter of notification will indicate whether the applicant was selected for



funding and will give the applicant's score and rank standing and will include reviewers' rating sheets and comments. If an applicant is not funded and believes that the score assigned was unfair or that an incorrect decision regarding eligibility was made, the applicant may file a written appeal to the CSA Regional Director and may also request a hearing before the Regional Appeals Panel. All appeals and requests for a hearing must be presented in writing to the Appropriate Regional Director within ten working days of notification by the regional offices of the applicant's failure to qualify for funding. An applicant may only appeal a decision not to fund. He may not appeal the amount of funds awarded.

(2) The appeal should state succinctly why the applicant believes the decision of CSA to be incorrect or unfair. Where a meeting with the Appeals Panel is requested, the panel will promptly schedule such a meeting, hear the applicant's complaint, and provide any additional pertinent information as to why the applicant was not funded. The Appeals Panel will consider the arguments and evidence presented by the applicant and present its findings and recommendations to the Regional Director. Within 15 working days of the deadline for submitting appeals, the Regional Director will notify in writing all applicants of his/her decision. The decisions of the Regional Directors will be final.

(3) Migrant subcontractors or delegate agencies will follow the same procedure outlined above except that their appeals will be made to the appropriate Migrant Conduit's Executive Director, whose decision will be final. There will be no appeals process for CSA Headquarters applicants since they are not funded on a competitive basis.

(g) *CSA Form 419 and Project Narrative.* (1) All applicants for CFNP funds are required to submit a CSA Form 419 (Summary of Work Program and Budget). Since funds for most applicants will be awarded on a competitive basis, it is absolutely essential that applicants provide, through the Form 419 and project narrative, as complete and specific a picture as possible of

*what they propose to do and how they intend doing it.* In preparing the narrative, applicants should refer to the discussions in the rating criteria in the following section.

**NOTE:** The requirement to conform both to the General Standards of Effectiveness and the Specific Standards of Effectiveness described in § 1061.50-6 of this subpart *must be met in order for an applicant to be considered eligible for funding.* Therefore, applicants must not only list in item 11 of CSA Form 419 the standards which are being met in each program category, *they must describe in the project narrative exactly how the standards will be addressed.* In other words, in addressing the General Standards of Effectiveness, the applicant must show how the project will (i) strengthen the community's planning and coordination capabilities, and/or (ii) improve service delivery systems, and/or (iii) make use of innovative approaches, and/or (iv) involve maximum feasible participation by the poor in the planning and implementation of the project, and/or (v) mobilize a broad range of resources, and/or (vi) hire the poor in carrying out the project's activities.

(2) In addressing the Specific Standards of Effectiveness applicants must list on the Form 419 the particular standard which is being met and describe in the project narrative the extent to which the project will result in (i) improvement in the nutritional status of the target population or (ii) reduction in hunger among the target population. Projects that do not meet a minimum of *three* of the general standards effectiveness and one of the specific standards *will not be considered eligible for funding.* Applicants *must identify in the project narrative their discussion of the standards of effectiveness with the heading: Standards of Effectiveness Addressed.* Failure to comply with this requirement will result in the application's being rejected as ineligible.

(h) *Rating Criteria.* In preparing the Form 419 and project narrative, applicants should keep in mind the seven criteria (discussed below) which will be used by CSA reviewing teams in rating and ranking applications.

(1) *Participation of the Poor.* Fundamental to all CSA-funded programs, including the CFNP Program, is the requirement that low-income residents be substantively involved in the plan-

ning, conduct, and evaluation of projects at the community level. The minimum requirements for the participation of the poor are spelled out in § 1060.1 of this chapter and all applicants are advised to review it carefully.

**NOTE:** Limited Purpose Agencies are reminded that they must have either a board of directors which is comprised of at least one-third representatives of the poor or a policy advisory committee, a majority of which are democratically selected representatives of the poor served by the project (See § 1062.200-4 of this chapter).

Although participation of the poor is an *eligibility requirement*, it is included in the rating criteria in order to highlight the emphasis that is being placed on participation of the poor in the CFNP and to enable CSA to make a judgement about the *quality* of an applicant's efforts to secure such participation. Thus, applicants will be rated on (i) the extent to which have involved the low-income residents of the areas to be served in the planning of the project, including the selection of goals and priorities; (ii) the ways in which the poor will be involved in the implementation of the project; and (iii) the ways in which the poor will be involved in the evaluation of the project.

(2) *Needs analysis.* The second criterion—the analysis of needs—refers to the initial step in the planning process which lies behind the project described in the Form 419 and project narrative. § 1067.40 of this chapter requires Title II grantees to develop and maintain planning documents which contain, among other things, an analysis of the particular needs the project is addressing. The needs analysis must describe the *nature* and *extent* of the problems of hunger and malnutrition among the poor in the community the project will serve. The analysis should indicate what *efforts are currently being undertaken* to meet those needs, what *gaps or short falls* there are in these efforts and the *extent to which* the needs or problems *remain unmet* or unsolved. The applicant should clearly identify, among the range of needs listed, the precise need(s) the proposed project will address. Appropriate statistics to document the need(s) should be supplied; for exam-

ple, the number of persons participating in the food stamp program as compared with the number of eligible persons not participating, or the number of children in need of but not receiving school breakfasts, or the number of families which could benefit from a gardening project, or the number of persons in need of emergency food assistance. The needs analysis must indicate which of the problems described will be addressed and why these particular problems (priorities) were selected. If the applicant is addressing other problems and needs of low-income persons, the needs analysis should indicate the order of priority which the problem of hunger and malnutrition has among those needs and should include a description of the types and level of resources already committed to solving that problem. Community Action Agencies should indicate the amount of local initiative funds, as well as other resources, which are currently being applied to anti-hunger activities.

(3) *Adequacy of work program and budget.* The third criterion—the adequacy of the work program and budget—refers to the project goals, activities, and budget described in the Form 419 and project narrative. The project goals (item 11 of Form 419) should be stated in *specific* and *measurable* terms and they should be *appropriately related to the needs* described in the needs analysis. They should reflect the *changes* or *results* which the project activities are expected to bring about. The activities should be listed in summary form on the Form 419 (item 13) and described in detail in the project narrative. The description should indicate not only *what* will be done but *how* it will be done, i.e., the *strategy* that will be pursued in achieving goals. The activities should be *appropriately related to the goals*. If an applicant is proposing to carry out activities in more than one program category, the categories would be listed on the Form 419 in priority order, and the *goals, activities and funds required for each category* should be *clearly delineated*. The applicant need only submit one budget (325 and 325a) for the entire proposal

whether one or more program categories is included.

(4) *Anticipated Impact.* The statement of project goals should include a description of what the applicant intends to accomplish, i.e., what results or changes the applicant intends to bring about in relation to the problem to be solved. Thus the statement of goals is a statement of anticipated impact. The anticipated impact of the project should be stated in specific and measurable terms and should include the number of persons to be served, the extent to which their nutritional needs will be met and the extent to which unmet needs will remain after the project is completed. The applicant should also include a statement indicating the per/person cost of serving those for whom the project is intended and the dollar value of services or benefits derived.

(5) *Coordination.* Each applicant must indicate to what extent other organizations conducting anti-hunger activities were involved in the planning of the project, and the ways in which the project will be coordinated in the implementation phase with the activities of these organizations. CAA's must indicate how they intend to coordinate their activities with anti-hunger groups and anti-hunger groups must indicate how they intend to coordinate their activities with CAA's.

(6) *Catalytic Effect of Project on Institutions.* Catalytic activity which is aimed at institutions should attempt to bring about two results: *Institutional change* and *mobilization of resources*. The means of achieving these is *advocacy*. The applicant, therefore, should describe in detail how the project staff will, through advocacy for low-income persons seek to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive the benefits to which they are entitled. Advocacy of this sort may and should include enlisting the poor to speak on their own behalf in order to insure that their views are heard, their rights are observed, the benefits to which they are entitled are provided, and their needs are met. The applicant should also state how the project staff will, through advocacy

for low-income persons, leverage dollars or in-kind contributions from other elements in the community in support of the project and what the overall end effect of the project itself will be in terms of leveraging dollars or services for low-income individuals.

(7) *Ability of Applicant to Perform.* § 1050, Subpart I, of this chapter requires Title II grantees to submit a semi-annual and annual project progress review report (CSA Form 440). Since the ability of the applicants to carry out successfully their proposed work program is one of the important criteria, applicants who are currently operating (or have operated in the past) a CFNP project *must attach to the application a copy of the CFNP portion of the most recent Form 440, updating it where necessary.* CSA grantees who have never operated a CFNP project must attach to the application that portion of their most recent Form 440 which relates to a project they have operated that is similar to CFNP projects. Applicants not previously funded by CSA should attach to the application a third-party or self-evaluation of a project they have been operating that is similar to CFNP projects, along with a brief statement summarizing their overall administrative ability and general performance record. All applicants currently operating CFNP projects are encouraged to conduct a third-party evaluation of their current CFNP project (or in the absence of such, a self-evaluation) and attach copies of these evaluations to their applications.

(i) *Training and Technical Assistance.* The applicant's need for training and technical assistance in carrying out the project should be carefully described in item 15 of the Form 419. It is presumed that most, if not all, projects will need some form of technical assistance. The training and technical assistance plans proposed by the regional T&TA providers will be based in part upon the statement of goals, activities, and T&TA needs expressed by applicants on their Form 419s. It is important, therefore, that applicants be precise and specific in defining and articulating their T&TA needs.

(j) *Program Accounts.* The following program account numbers for the var-



ious program categories should be entered in item 16 of Form 419:

- 12-Access.
- 13-Self-Help.
- 14-Food Supply.
- 15-Nutrition education.
- 16-Crisis relief.
- 17-Special Support.
- 29-Research.
- 39-Demonstration.
- 42-T&TA.
- 48-Evaluation.

[45 FR 33789, May 20, 1980, as amended at 45 FR 56348, Aug. 25, 1980]

## APPENDIX A

### I. PROGRAM PRIORITIES

(1) In continuing Access as the number one priority, CSA recognizes both accomplishments and continued need. The primary emphasis of the CFNP over the past two years, under the head of Access activities, has been to increase the participation of the poor in the various public feeding programs at the federal, state and local level. Partly as a result of that emphasis, a substantial momentum has developed among anti-hunger advocates and the various administering agencies which has, in fact, resulted in sizable increases in the number of poor participating in those programs and in significant improvements in program administration. Funding levels for the federally-funded programs have been increased and the statutes and regulations governing them have been considerably improved.

(2) Much has been done, yet much remains to be done. Forty percent (40%) of the nation's poor and near-poor who are eligible still do not participate in the Food Stamp Program; seventy-five percent (75%) do not participate in the School Breakfast Program; and eighty-five percent (85%) are still not reached by the WIC Program. These statistics are unacceptably high, and the unmet need is great with respect to some of the other federally-funded programs, e.g. the Summer Food Program. Therefore, unrelenting efforts must continue to assure that all of the poor who are eligible and who wish to participate in these programs are given an opportunity to do so. CFNP grantees need to advocate for the establishment of new and the expansion of existing child nutrition programs where the need exists (e.g., School Breakfast and WIC), and they need to advocate for greater participation by the elderly poor in programs that are designed to meet the nutritional needs of the elderly, such as congregate feeding programs sponsored by the Ad-

ministration of Aging. In addition, grantees must continue to monitor these programs at the state and local level to assure that the new statutes and regulations are adhered to, that effective outreach efforts are undertaken, and that the programs are administered effectively, efficiently and fairly.

(3) Applicants are urged to increase and strengthen activities that promote the self-sufficiency of the poor. Self-Help activities contribute directly to self-sufficiency and it is for this reason we are again assigning this category of activity the highest priority after Access. There are other activities, however, that contribute indirectly to self-sufficiency. Therefore, CSA wishes not only to encourage applicants to design proposals that include Self-Help activities where such activities are appropriate and feasible, but to stress the importance for CFNP grantees to utilize every means in whatever activities they undertake, *in all program categories*, to achieve the goal of self-sufficiency for the poor, whether they contribute directly or indirectly to that goal.

(4) In the category of Access for example, buying food from poor farmers for the School Breakfast and School Lunch programs contributes directly to self-sufficiency. So does an arrangement which permits food stamp recipients to buy food directly from poor farmers with their food stamps, or having a non-profit organization run by and for the poor distribute food stamps. Also, in Access, expanding the School Breakfast and WIC programs contributes indirectly to self-sufficiency since, to the extent that one enables a child to get off to a healthy start in life and to acquire a solid education, he has helped to provide that child with the equipment necessary to become a self-sufficient adult. In working to expand and increase participation in the School Breakfast and WIC programs, grantees are also, happily, focusing on two of the federal programs where there is the greatest unmet need.

(5) Under the new category, Food Supply, whose aim is to stimulate the private sector, there are a variety of activities which contribute directly and indirectly to self-sufficiency. Hiring the poor to work in wholesale and retail outlets and in the manufacturing and distribution aspects of the industry obviously contributes directly. Initiatives by the food industry to make more nutritious food available to the poor at more reasonable prices contribute indirectly, as do advertising and educational programs sponsored by private industry to make the poor more nutritionally aware.

(6) With respect to Crisis Relief, the provision of emergency food assistance often is necessary "to tide over" a family or individual while they are between jobs. To the extent that such assistance helps to keep a

person going until the new job or paycheck comes in, it is contributing directly to the achievement of the self-sufficiency of the individual. Further, there are opportunities for the poor to become directly involved in the provision of emergency food assistance either as paid workers or as volunteers until other work is available.

(7) In considering options for the provision of emergency food assistance, communities are urged to give consideration to the establishment of food pantries and emergency food box projects which draw upon a variety of community resources (including the food industry) for their continued support. Because of the extremely adverse impact upon the poor of continued high inflation and high energy costs, CSA recognizes the increased need for emergency food assistance, has given this category of activities a higher priority, and urges local communities to create mechanisms for the provision of such assistance.

(8) Under Nutrition Education, activities which improve "the ability of low-income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior foods and to prepare and preserve these foods in ways that minimize the loss of nutrients" obviously contribute to self-sufficiency. CNFP grantees are urged to monitor existing nutrition/consumer education programs to make sure: (1) That they are targeted to meet the specific needs of the poor, (2) That the poor are involved in the planning of new efforts, and (3) That to the extent possible the poor are hired to conduct outreach and assist in conducting nutrition and consumer education activities.

(9) All CNFP grantees should seek to hire the poor wherever possible in the conduct of project activities, and they should advocate the hiring of the poor in all publicly-funded food programs and by the private sector in the manufacture, distribution and sale of foodstuffs. A suitable job is, after all, the primary and ultimate means of achieving self-sufficiency in our society.

(10) While CSA is again establishing national priorities, it is important to note that applicants may, without penalty, select activities and program categories that best meet the needs of the poor in the communities which they serve. However, all projects, in addition to containing activities that promote the *self-sufficiency of the poor*, will be expected to continue the priority of emphases established by last year's rule, i.e., they must be *catalytic*, contain a *strong advocacy thrust*, and mobilize significant *other resources*. Failure to include these elements may result in an applicant's inability to score high enough to be funded.

## II. FURTHER CLARIFICATION OF THE KEY TERMS: CATALYTIC ACTIVITY, ADVOCACY, DIRECT SERVICE DELIVERY AND MONITORING (See § 1061.50-2)

The CFNP policy makes explicit two assumptions: (1) That not all catalytic activity is advocacy and (2) That some forms of direct service delivery can be catalytic. These assumptions can be diagrammed as follows:

| Activity aimed at individuals                                                                                                                                                                                                                                                                                                                            | Activity aimed at institutions                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Catalytic                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                  |
| Direct Service: One-on-one activity (for example, some types of out-reach activity) whose purpose is to deliver goods or services to low-income individuals and families in such a manner as to trigger a process that is carried forward by the recipient, either on his own or with the assistance of groups and agencies other than the CFNP project. | Advocacy: Activity whose purpose is to insure that the views of low-income individuals and families are heard, their rights observed, the benefits to which they are entitled are actually provided and their needs met to the extent possible, whether this is achieved by a change in a law, regulation, policy, procedure or attitude or by leveraging additional public or private resources |
| Non-catalytic                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                  |
| Direct Service: One-on-one activity (for example, some types of out-reach activity) whose sole effect is the delivery by a CFNP worker of goods or services to low-income individuals and families.                                                                                                                                                      | Advocacy: Activity which results in CFNP staff being co-opted into performing, without reimbursement, services which are properly the responsibility of another group or agency.                                                                                                                                                                                                                 |

### Direct Service as a Catalytic Activity

Although providing one-on-one service makes little sense in the context of advocacy and coalition-building at the state level and even less at the level of the national anti-hunger groups and T&TA providers, such service is important at the level at which community action agencies operate. A local CFNP project which completely severs the service link between its staff and low-income individuals, not only risks a loss of credibility in the community but is depriving itself of one of its richest resources, first-hand knowledge of the nutritional problems of those the CFNP is ultimately intended to benefit. In addition, the one-on-one relationship created through out-reach activity at the local level has two other consequences which are vital for the success of the CFNP: (1) By enhancing the opportunity to involve recipients of services in the planning and implementation of programs set up to serve them, it contributes to the

achievement of the overall goal of Title II programs—self-sufficiency—and (2) It makes possible the kind of grass-roots support needed for really effective advocacy at the state and national levels.

However, as indicated earlier [in § 1061.50-4 (a) and (b) of this subpart], the same passage of the EOA which establishes the goal of self-sufficiency, points to *catalytic* activity as the principal means of achieving this goal. This should not be construed as ruling out one-on-one service. If the delivery of a direct service by a CFNP worker to a low-income individual produces a benefit which has a continuing and expanding effect on that individual and others, even after the reduction or termination of direct CFNP support, then the delivery of that service qualifies as a catalytic activity. Non-catalytic service delivery, on the other hand, should be kept to a minimum, be provided on a temporary or emergency basis only and be supported wherever possible from local initiative funds. The intent of the EOA is reinforced by a practical consideration: the very limited funding of the CFNP. The fact that the CFNP budget is less than 3/10ths of 1% of the total federal food outlay suggests not only that most of the direct service provided should be of the catalytic variety, but that there should be a very strong emphasis on that type of catalytic activity known as advocacy.

#### *Advocacy as a Catalytic Activity*

It can be inferred from the statement of the five purposes of Title II programs (see § 1061.50-6) that the two most important objectives of the CFNP are the mobilization of resources and institutional change. The techniques used to bring about these two results are what is meant in this rule by the term "advocacy". Because advocacy, unlike catalytic activity of the direct service variety, is aimed at institutions and the general public, it obviously has the potential for producing far greater dividends for the low-income population than direct service.

The intent of the rule is that an advocacy component be built into *each project* but not necessarily into each project activity. For example, a self-help project may include as one of its activities the provision of seeds and technical assistance to low-income gardeners. The catalytic potential of this one-on-one service could be greatly increased if the project were to include a specific plan to induce other public or private institutions to make land available and assume at least part of the burden of providing seeds and technical assistance.

It may be difficult and sometimes impossible to score successes in local advocacy activity. But the rule calls on all local project operators to make a *bona fide* effort in this direction. It is especially important, in this era of dwindling public funds, to engage in

vigorous *private sector* advocacy. Grantees inexperienced in advocacy techniques should seek help from the CFNP's regional and national T&TA providers.

The following examples may help to further clarify what is meant by catalytic direct service, advocacy, etc., and how these different activities can be combined in one project:

#### *1. Under Access.*

a. *Direct Service.* Any one-on-one direct service activity in the Access category can be considered, for the purposes of this rule, to be catalytic. For example, an activity which is catalytic and therefore quite acceptable is searching out low-income persons eligible for food stamps, alerting them to their entitlements and referring them to the local certification office for additional counseling and enrollment in the Food Stamp program. Another example is representing an applicant for food stamps at a local or State-level hearing.

Some activities, however, are more catalytic than others, that is, they produce an even greater return for the dollars invested. For example, a CFNP project, instead of directly representing individuals at Food Stamp hearings, may help low-income individuals learn the techniques needed to enable them to speak to themselves at Food Stamp hearings and to organize and train others to do the same. The most catalytic of all is the advocacy approach.

b. *Advocacy.* Examples of advocacy in the access category are: (1) Working out arrangements with a grantee of the national Legal Services Corporation to provide one-on-one legal counseling and representation for food stamp recipients experiencing difficulties with welfare offices; (2) monitoring of local welfare offices to insure that they comply with USDA regulations so that clients obtain the benefits to which they are entitled; (3) organizing a corps of county volunteers to provide elderly food stamp recipients with support services, such as transportation to food stamp outlets and grocery stores; (4) disseminating information locally on the national School Breakfast Program and seeking to persuade local officials and school board members to institute breakfast programs in schools serving low-income communities.

#### *2. Under Self-Help.*

a. *Direct Service.* Any one-on-one direct service in the Self-Help category is catalytic. For example, the provision of seeds and T&TA to low-income gardeners not only stimulates them to pursue an activity which promotes self-sufficiency (the goal of all Title II programs), but the gardeners, by investing their own labor at no cost to the project, are able to produce and preserve food whose value far exceeds the cost of the seeds and T&TA. Nonetheless, a gardening



project becomes catalytic in the full sense if, in addition to providing seeds and T&TA, it includes a strong advocacy component.

b. *Advocacy.* Examples of advocacy in the Self-Help category are: (1) Negotiating with USDA's Extension Service or other public or private agencies to provide seeds and on-going T&TA for low-income gardeners; (2) persuading a local government to change its regulation governing the use of vacant land so as to make it available for family and community gardens; (3) negotiating with local governments to remove barriers, resulting from local ordinances or regulations, to the establishment of farmers' markets and food co-ops.

### 3. Under Food Supply.

a. *Direct Service.* Since most of the activities listed under Food Supply are aimed at the private sector, very few of them involves the provision of direct services to the poor. One exception is where a food bank operated by a grantee provides foodstuffs to organizations operating feeding programs for the poor. However, a food bank project can be truly catalytic by taking a small amount of grant funds and mobilizing considerably greater resources and services from the public and private sectors of the community it serves. Some food banks have managed to provide ten to fifteen dollars worth of food to the poor for every CFNP dollar invested.

b. *Advocacy.* Almost all of the activities under Food Supply are by definition advocacy activities, e.g., organizing consumer action to get food sales tax laws repealed; encouraging food retailers to join with city governments and community based groups to bring supermarkets back to inner cities; and enlisting the support of retailers for the establishment of consumer monitoring and advisory panels. Developing a broad base of community support for the establishment of a food bank and continued mobilization of resources and solicitation of foodstuffs from the food industry to support the bank are also examples of advocacy. While many of the activities under Food Supply result eventually in improved services to the poor, such as making available a variety of inexpensive, quality foods (in order to promote optimum nutrition among the poor), the activity required to bring that about, namely, encouraging industry to adopt more responsible packaging and advertising practices, is indeed an advocacy activity.

### 4. Under Crisis Relief.

a. *Direct Service.* Most direct service activity in the Crisis Relief category is non-catalytic, for example, issuing emergency food vouchers, paid for by CFNP funds, to a family in need.

b. *Advocacy.* Examples of advocacy in the Crisis Relief category are: (1) Spinning off a currently CAA operated food pantry or food box project to a community coalition that raises funds to carry out the projects inde-

pendently of CAA subsidy; (2) negotiating with USDA, the Federal Disaster Assistance administration, church and civic groups and local government entities to establish a mechanism in the community that will insure prompt distribution of foodstuffs to low-income individuals in emergency situations; (3) monitoring the operation of a local food stamp program to insure that the new USDA regulation is followed which cuts food stamp issuance time for a destitute individual or family to the same day the application is filed (the so-called "same-day-service").

### 5. Under Nutrition/Consumer Education.

a. *Direct Service.* As in the case of "Access" and "Self-help" activities, it is hard to think of a direct service activity in the "Nutrition Education" category which does not have some catalytic effect. For example, there is surely some multiplier effect in the activity of teaching a group of low-income individuals how to compare foods and shop wisely, in terms of nutritional content or price or both. But given the fact that other agencies have been furnished Federal monies to carry out nutrition education activities, a more cost-effective expenditure of limited CFNP funds would be on advocacy activities relating to nutrition education.

b. *Advocacy.* Examples of advocacy in the Nutrition Education category are: (1) Working with USDA's Extension Service or with other appropriate state agencies to insure that federally-financed nutrition education programs are, to the extent provided for under the law, designed for and directed at the low-income population; (2) Organizing groups in the low-income community to monitor in local retail food outlets price increases that exceed Administration inflation guidelines.

## III. MONITORING

The statutory authority for CSA's and CSA grantees' monitoring of other federally-administered programs is found in Title IX of the Economic Opportunity Act which states: "The Director shall, directly through grants or contracts, measure and evaluate the impact of all programs authorized by this Act and of poverty-related programs authorized by other Acts, in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services \* \* \*".

Since the USDA is the principal operator of federal food programs, the bulk of CFNP monitoring activities will be aimed at programs operated by USDA at the state and local level. Carol Tucker Foreman, Assistant Secretary for Food and Consumer Services, USDA, in commenting upon the FY 79 proposed CFNP regulations, recognized and

supported this critically important role of CSA's CFNP grantees. Having stated her commitment to improve the operation of USDA's food programs she said:

"We need support and, I am not afraid to admit, pressure \* \* \* we need the help and expertise of CFNP grantees. We can write the rules and publish guidelines, but we cannot peer into every community in this land to see how our programs reach people. We need to see how the programs function and receive guidance as to how they can be improved. *CFNP must see this function as its major responsibility.* There must be informed and aggressive actions state-wide and in communities across the country to monitor program implementation, to help governmental agencies do their jobs and, where necessary, insure that the law is enforced. Certainly we intend to improve our capacity to aid in this process, but most of this work must be undertaken locally where only CFNP, and the volunteer work of other civic organizations, can truly be effective." (emphases added)

Thus the monitoring role of CFNP grantees has not only been recognized by USDA, it has been strongly encouraged, and the letter of Ms. Foreman underscores once again its importance.

It should be emphasized that the type of monitoring described above is *not* the same as the monitoring and oversight functions that USDA and other federal agencies, by law, must *themselves* carry out to insure that programs they administer comply with relevant statutes and regulations, are managed soundly, and achieve the purposes for which they were instituted. Therefore, in carrying out this function, CFNP grantees should carefully avoid conveying the impression that they are supplanting or usurping the monitoring functions proper to these other agencies.

#### IV. OUTREACH

Grantees involved in access activities are urged to obtain a copy of USDA's Final Rule, dated November 6, 1979, implementing the outreach provisions of the Food Stamp Act of 1977 (Ref. 7 CFR Part 272). In its final rule, USDA distinguishes between two types of outreach as follows:

"'Informal outreach' is the conveying of information about the Program through such means as publications, telephone hot-lines, films, media and face-to-face contacts. 'Non-informational outreach' is the providing of transportation to certification or issuance offices, or similar physical program support."

The USDA rule officially recognizes the contribution CSA has been making to the Food Stamp outreach effort in the past and assumes that there will be joint USDA-CSA outreach activity in the future, with USDA coordinating the overall program. Under the

USDA rule, for example, while USDA will not reimburse State agencies for non-informational outreach where a CAA is doing such outreach, USDA may pay for such outreach where a CAA is not providing it. In addition, a State agency may be reimbursed for doing informational outreach in the same area a CAA may be doing it. This is simply a recognition of the fact that the combined USDA/CSA resources for outreach are generally insufficient to meet the total need.

Granted that CSA has a continuing role in the area of Food Stamp outreach, this does not mean that the CFNP should bear a major part of the outreach burden. For one thing, all CAA's whether or not they are recipients of CFNP funds, have a Food Stamp outreach responsibility. Secondly, CFNP funds are limited and should be applied primarily to advocacy activities directed at institutions rather than on direct services to individuals.

A partial solution to CSA's outreach dilemma is provided by USDA's assumption of a major part of the outreach responsibility *and in particular by the policy, newly reaffirmed in USDA's final rule on outreach, that State agencies may delegate Food Stamp outreach responsibilities, on a reimbursable basis, to CAA's and CFNP grantees.* There is an opportunity here for some very significant catalytic activity on the part of CFNP grantees and CAA's, namely, the leveraging, *by means of a contract with a State agency,* of USDA funds for outreach performed by CSA's grantees.

#### V. NATIONAL CONSUMER COOPERATIVE BANK

The National Consumer Cooperative Bank authorized by Congress in 1978 is required by law to make its "best efforts" to provide 35% of its loan money to low-income organizations including food co-ops. The Bank will publish its final regulations by the end of May, 1980. In the meantime, they have a brochure, available upon request, which explains application procedures and eligibility criteria. Applications are currently being accepted and will be processed on a *first come first served* basis. CFNP grantees and prospective applicants for food co-op projects are therefore urged to submit their applications to the Bank promptly. All CAA's are supposed to be on the Bank's mailing list. CAA's which are not yet on the list and other interested CFNP grantees or prospective applicants for CFNP funds for food co-op projects should contact the Bank at the following address for further information: National Consumer Cooperative Bank, Attn: Ms. Pru Pemberton, 2001 S Street, N.W., Washington, D.C. 20009; Telephone: 424-2481.

In addition applicants may wish to contact the Cooperative Bank Monitoring Project

whose principal purpose is to ensure full participation by eligible low-income organizations. The address of the Project is: Conference on Alternatives, State and Local

Policies, Attn: Mr. Norman Davis, Co-op Bank Monitoring Project, 2000 Florida Avenue, N.W., Washington, D.C. 20009; Telephone 202-387-6030.

VI. FISCAL YEAR 1980 ALLOCATIONS <sup>1</sup>

| Region      | Gen. comm.   | Spec. sup.  | T&TA      | Indians     |
|-------------|--------------|-------------|-----------|-------------|
| I.....      | 931,000      | 142,000     | 46,000    | 196,000     |
| II.....     | 1,595,000    | 243,000     | 79,000    | 60,000      |
| III.....    | 1,810,000    | 276,000     | 90,000    | .....       |
| IV.....     | 2,523,000    | 385,000     | 125,000   | 225,000     |
| V.....      | 2,141,000    | 327,000     | 107,000   | 194,000     |
| VI.....     | 1,849,000    | 282,000     | 92,000    | 525,000     |
| VII.....    | 900,000      | 137,000     | 45,000    | 140,000     |
| VIII.....   | 878,000      | 134,000     | 44,000    | 380,000     |
| IX.....     | 1,390,000    | 212,000     | 69,000    | 700,000     |
| X.....      | 1,063,000    | 162,000     | 53,000    | 480,000     |
| Totals..... | \$15,080,000 | \$2,300,000 | \$750,000 | \$2,900,000 |

<sup>1</sup> CSA reserves the right to make adjustments in these allocations in the event that a region or conduit is unable to expend its full allocations due to a lack of qualified applicants.

## MIGRANT CONDUITS

|                                                |           |
|------------------------------------------------|-----------|
| Rural New York.....                            | \$290,171 |
| Del Marva ministries.....                      | 203,708   |
| Migrant and seasonal farmworkers association.. | 417,400   |
| Florida <sup>1</sup> .....                     | 416,225   |
| Minnesota migrant council.....                 | 656,250   |
| Colonias Del Valle.....                        | 606,157   |
| Campesinos Unidos.....                         | 661,339   |
| Idaho migrant council.....                     | 498,750   |
|                                                | 3,750,000 |

<sup>1</sup> Grantee (conduit) to be determined.

APPENDIX B—RATING CRITERIA—GENERAL  
COMMUNITY PROJECTS

|                                                                                                                                                                                                                                                                                                                                  | Points |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Participation of the Poor (10 pts):<br>Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project.....                                                                                                                                                                          |        |
| 2. Analysis of Needs/Priorities (0-15 pts):<br>Nature and extent of problem is adequately described and documented (0-8 pts).....<br>Priorities selected represent the most serious needs (0-7 pts).....                                                                                                                         |        |
| 3. Adequacy of Work Program and Budget (0-20 pts):<br>Goals are appropriately related to need and are specific and measurable (0-5 pts).....<br>Activities are adequately described and appropriately related to goals (0-10 pts).....<br>Budget is appropriately related to activities and adequately documented (0-5 pts)..... |        |
| 4. Anticipated impact (0-10 pts):<br>In relation to the problem to be solved and the resources committed to the project, the:<br>Impact is minimal (0-3 pts).....<br>Impact is moderate (4-6 pts).....<br>Impact is substantial (7-10 pts).....                                                                                  |        |

APPENDIX B—RATING CRITERIA—GENERAL  
COMMUNITY PROJECTS—Continued

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Points |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 5. Coordination (0-10 pts):<br>Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0-5 pts).....<br>Other institutions/organizations will be involved in the implementation of the project (0-5 pts).....                                                                                                                                                                                                                                                                                                                                                                                                          |        |
| 6. Catalytic Effect of Project on Institutions (ADVOCACY) (0-20 pts):<br>A. Institutional Change (0-10 pts):<br>Grantee, through <i>advocacy</i> for low-income persons, seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled.....<br>B. Mobilization of Community Resources (0-10 pts):<br>Grantee through <i>advocacy</i> for low-income persons leverages dollars or in-kind contributions from other elements in the community.....<br>0-25% of total budget (0-3 pts).....<br>25-50% of total budget (4-6 pts).....<br>50% and up (7-10 pts)..... |        |
| 7. Ability of Applicant to Perform (0-15 pts):<br>Assessment of past CFNP or other relevant projects (including written self- or third-party evaluations, progress reports, or CSA on-site assessments) (0-10 pts)....<br>Assessment of applicant's overall administrative ability and general track record (0-5 pts).....<br>Total points (possible: 100).....                                                                                                                                                                                                                                                                                                                |        |



APPENDIX C—RATING CRITERIA—INDIAN  
PROJECTS

|                                                                                                                                                                                                                                                                                                                                                            | Points |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Participation of the Poor (10 pts):<br>Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project .....                                                                                                                                                                                                   |        |
| 2. Analysis of Needs/Priorities (0-15 pts):<br>Nature and extent of problem is adequately described and documented (0-8 pts).....<br>Priorities selected represent the most serious needs (0-7 pts) .....                                                                                                                                                  |        |
| 3. Adequacy of Work Program and Budget (0-20 pts):<br>Goals are appropriately related to need and are specific and measurable (0-5 pts) .....                                                                                                                                                                                                              |        |
| Activities are adequately described and appropriately related to goals (0-10 pts).....<br>Budget is appropriately related to activities and adequately documented (0-5 pts).....                                                                                                                                                                           |        |
| 4. Anticipated impact (0-10 pts):<br>In relation to the problem to be solved and the resources committed to the project, the:<br>Impact is minimal (0-3 pts).....<br>Impact is moderate (4-6 pts).....<br>Impact is substantial (7-10 pts) .....                                                                                                           |        |
| 5. Coordination (0-10 pts):<br>Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0-5 pts).....<br>Other institutions/organizations will be involved in the implementation of the project (0-5 pts) .....                                                                                     |        |
| 6. Catalytic Effect of Project on Institutions (ADVOCACY) (0-20 pts):<br>A. Institutional Change (0-15 pts):<br>Grantee, through <i>advocacy</i> for low-income persons seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled ..... |        |
| B. Mobilization of Community Resources (0-5 pts):<br>Grantee, through <i>advocacy</i> for low-income persons leverages dollars or in-kind contributions from other elements in the community .....                                                                                                                                                         |        |
| 0-25% of total budget (0-5 pts) .....                                                                                                                                                                                                                                                                                                                      |        |
| 25% and up (6-10 pts) .....                                                                                                                                                                                                                                                                                                                                |        |
| 7. Ability of Applicant to Perform (0-15 pts):<br>Assessment of past CFNP or other relevant projects (including written self or third-party evaluations, progress reports, or CSA on-site assessments) (0-10 pts).....<br>Assessment of applicant's overall administrative ability and general track record (0-5 pts) .....                                |        |
| Total points (possible: 100) .....                                                                                                                                                                                                                                                                                                                         |        |

APPENDIX D—RATING CRITERIA—MIGRANT  
PROJECTS

|                                                                                                                                                                                                                                                                                                                                                            | Points |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Participation of the Poor (10 pts):<br>Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project .....                                                                                                                                                                                                   |        |
| 2. Analysis of Needs/Priorities (0-10 pts):<br>Nature and extent of problem is adequately described and documented (0-5 pts).....<br>Priorities selected represent the most serious needs (0-5 pts) .....                                                                                                                                                  |        |
| 3. Adequacy of Work Program and Budget (0-20 pts):<br>Goals are appropriately related to need and are specific and measurable (0-5 pts) .....                                                                                                                                                                                                              |        |
| Activities are adequately described and appropriately related to goals (0-10 pts).....<br>Budget is appropriately related to activities and adequately documented (0-5 pts).....                                                                                                                                                                           |        |
| 4. Anticipated impact (0-10 pts):<br>In relation to the problem to be solved and the resources committed to the project, the:<br>Impact is minimal (0-3 pts).....<br>Impact is moderate (4-6 pts).....<br>Impact is substantial (7-10 pts) .....                                                                                                           |        |
| 5. Coordination (0-10 pts):<br>Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0-5 pts).....<br>Other institutions/organizations will be involved in the implementation of the project (0-5 pts) .....                                                                                     |        |
| 6. Catalytic Effect of Project on Institutions (ADVOCACY) (0-25 pts):<br>A. Institutional Change (0-15 pts):<br>Grantee, through <i>advocacy</i> for low-income persons seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled ..... |        |
| B. Mobilization of Community Resources (0-10 pts):<br>Grantee, through <i>advocacy</i> for low-income persons leverages dollars or in-kind contributions from other elements in the community .....                                                                                                                                                        |        |
| 0-25% of total budget (0-5 pts) .....                                                                                                                                                                                                                                                                                                                      |        |
| 25% and up (6-10 pts) .....                                                                                                                                                                                                                                                                                                                                |        |
| 7. Ability of Applicant to Perform (0-15 pts):<br>Assessment of past CFNP or other relevant projects (including written self or third-party evaluations, progress reports, or CSA on-site assessments) (0-10 pts).....<br>Assessment of applicant's overall administrative ability and general track record (0-5 pts) .....                                |        |
| Total points (possible: 100) .....                                                                                                                                                                                                                                                                                                                         |        |

## App. E

### APPENDIX E—RATING CRITERIA—SPECIAL SUPPORT PROJECTS

|                                                                                                                                                                                                                                                                                                                                                     | Points |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Participation of the Poor (10 pts):<br>Substantive participation by the poor is ensured in the planning, conduct, and evaluation of the project .....                                                                                                                                                                                            |        |
| 2. Analysis of Needs/Priorities (0-10 pts):<br>Nature and extent of problem is adequately described and documented (0-5 pts).....<br>Priorities selected represent the most serious needs (0-5 pts) .....                                                                                                                                           |        |
| 3. Adequacy of Work Program and Budget (0-20 pts):<br>Goals are appropriately related to need and are specific and measurable (0-5 pts) .....                                                                                                                                                                                                       |        |
| Activities are adequately described and appropriately related to goals (0-10 pts) .....                                                                                                                                                                                                                                                             |        |
| Budget is appropriately related to activities and adequately documented (0-5 pts) .....                                                                                                                                                                                                                                                             |        |
| 4. Anticipated impact (0-10 pts):<br>In relation to the problem to be solved and the resources committed to the project, the:<br>Impact is minimal (0-3 pts) .....                                                                                                                                                                                  |        |
| Impact is moderate (4-6 pts) .....                                                                                                                                                                                                                                                                                                                  |        |
| Impact is substantial (7-10 pts) .....                                                                                                                                                                                                                                                                                                              |        |
| 5. Coordination (0-10 pts):<br>Applicant has involved other institutions and organizations, where appropriate, in the planning of the project (0-5 pts).....<br>Other institutions/organizations will be involved in the implementation of the project (0-5 pts) .....                                                                              |        |
| 6. Catalytic Effect of Project on Institutions (ADVOCACY) (0-25 pts):<br>A. Institutional Change (0-15 pts):<br>Grantee, through advocacy for low-income persons seeks to change interpretations of laws, regulations, policies, procedures, and attitudes in order to insure that low-income persons receive that to which they are entitled ..... |        |
| B. Mobilization of Community Resources (0-10 pts):<br>Grantee, through advocacy for low-income persons leverages dollars or in-kind contributions from other elements in the community .....                                                                                                                                                        |        |
| 0-25% of total budget (0-5 pts) .....                                                                                                                                                                                                                                                                                                               |        |
| 25% and up (6-10 pts) .....                                                                                                                                                                                                                                                                                                                         |        |
| 7. Ability of Applicant to Perform (0-15 pts):<br>Assessment of past CFNP or other relevant projects (including written self or third-party evaluations, progress reports, or CSA on-site assessments) (0-10 pts) ....<br>Assessment of applicant's overall administrative ability and general track record (0-5 pts) .....                         |        |
| Total points (possible: 100) .....                                                                                                                                                                                                                                                                                                                  |        |

## Title 45—Public Welfare

### APPENDIX F—RATING CRITERIA—REGIONAL T&TA PROJECTS

|                                                                                                                                                                                                                                                                                         | Points |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Applicant has Skills/Abilities to Perform Adequately (0-30 pts):<br>Applicant's past experience (0-10 pts):<br>Quality of Staff:<br>Knowledge of Food and Nutrition Field (including other Federal food programs) (0-10 pts) .....                                                   |        |
| 2. Proposal is Responsive to CSA Policy Priorities (0-25 pts):<br>Applicant demonstrates an understanding of an adequate plan to assist CFNP grantees in moving from a service delivery to a catalytic role by engaging in advocacy to effect:<br>Institutional change (0-15 pts) ..... |        |
| Mobilization of resources (0-10 pts) .....                                                                                                                                                                                                                                              |        |
| 3. Proposal is Responsive to CFNP Grantee Needs for T&TA in Five Program Categories (0-25 pts):<br>Plan is adequate to meet grantee needs (0-15 pts) .....                                                                                                                              |        |
| Plan is appropriately related to the activities in the five categories (0-10 pts) .....                                                                                                                                                                                                 |        |
| 4. Proposal is Responsive to CFNP Grantee Needs for T&TA in Program Management (0-10 pts):<br>Applicant proposes an appropriate and adequate plan to assist grantees to improve their ability to:<br>Assess needs .....                                                                 |        |
| Set goals and priorities .....                                                                                                                                                                                                                                                          |        |
| Evaluate results .....                                                                                                                                                                                                                                                                  |        |
| 5. Proposal includes a Plan to Coordinate T&TA Activities with Other Appropriate Entities (0-5 pts) .....                                                                                                                                                                               |        |
| 6. Proposal includes a Plan to Evaluate Results of Applicant's Efforts (0-5 pts) .....                                                                                                                                                                                                  |        |
| Total points (possible: 100) .....                                                                                                                                                                                                                                                      |        |

### APPENDIX G—REGIONAL OFFICES

#### REGION I

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Community Services Administration, John F. Kennedy Federal Building, Room 432, Boston, Massachusetts 02203

CFNP Coordinator: Ms. Jean F. McFague,  
Phone: (617) 223-4022

#### REGION II

Serving: New Jersey, New York, Puerto Rico, Virgin Islands

Community Services Administration, 26 Federal Plaza, 32d Floor, New York, New York 10007

CFNP Coordinator: Ms. Sandra Hamilton,  
Phone: (212) 264-1946

**REGION III**

Serving: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Community Services Administration, Old U.S. Court House, Post Office Box 160, Philadelphia, Pennsylvania 19105

CFNP Coordinator: Ms. Norma Clarkson, Phone: (215) 597-1145

**REGION IV**

Serving: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Community Services Administration, 101 Marietta Street, N.W., Room 2604, Atlanta, Georgia 30323

CFNP Coordinator: Mr. Sylvester Lindsey, Jr., Phone: (404) 221-2799

**REGION V**

Serving: Illinois, Michigan, Minnesota, Ohio, Wisconsin

Community Services Administration, 300 South Wacker Drive, 25th Floor, Chicago, Illinois 60606

CFNP Coordinator: Ms. Elizabeth Newsome, Phone: (312) 353-1814

**REGION VI**

Serving: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Community Services Administration, 1200 Maine Street, Dallas, Texas 75202

CFNP Coordinator: Mr. Shannon Doss, Phone: (214) 767-6249

**REGION VII**

Serving: Iowa, Kansas, Missouri, Nebraska  
Community Services Administration, 911 Walnut Street, Kansas City, Missouri 64106

CFNP Coordinator: Mr. Isaiah Celestine, Phone: (816) 374-2171

**REGION VIII**

Serving: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Community Services Administration, 333 West Colfax Avenue, Tremont Center Building, Denver, Colorado 80204

CFNP Coordinator: Mr. Willard O'Berry, Phone: (303) 837-3211

**REGION IX**

Serving: Arizona, California, Hawaii, Nevada, Trust Territories

Community Services Administration, 450 Golden Gate Avenue, Post Office Box 36008, San Francisco, California 94102

CFNP Coordinator: Mr. Darnell E. White, Phone: (415) 556-7617

**REGION X**

Serving: Alaska, Idaho, Oregon, Washington

Community Services Administration, 1321 Second Avenue, Seattle, Washington, 98101

CFNP Coordinator: Ms. Alberta Adams, Phone: (206) 442-7194

**APPENDIX H—MIGRANT CONDUITS****MINNESOTA MIGRANT COUNCIL**

Serving: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota

Post Office Box 1231, St. Cloud, Minnesota 56301

CFNP Coordinator: Mr. Rick Echola, Phone: (612) 253-7010

**FLORIDA FARMWORKER'S COUNCIL**

Serving: Florida

1975 East Sunrise Boulevard, Suite 850, Fort Lauderdale, Florida 33304

CFNP Coordinator: Ms. Anita McGruder, Phone: (305) 763-5252

**MIGRANT AND SEASONAL FARMWORKERS ASSOCIATION**

Serving: Alabama, Mississippi, Georgia, Louisiana, Tennessee, South Carolina, North Carolina, Kentucky

Post Office Box 33315, 3929 Western Boulevard, Raleigh, North Carolina 27606

CFNP Coordinator: Ms. Marian Tucker, Phone: (919) 851-7611

**RURAL NEW YORK**

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York

339 East Avenue, Suite 305, Rochester, New York 14604

CFNP Coordinator: Mr. Jefferey Lewis, Phone: (716) 546-7180

**CAMPESINOS UNIDOS**

Serving: Arizona, California, Nevada

Post Office Box 203, Brawley, California 92227

CFNP Coordinator: Ms. Toni Cornejo, Phone: (714) 344-4500

**COLONIAS DEL VALLE**

Serving: Oklahoma, Arkansas, Texas, New Mexico

Post Office Box 907, San Juan, Texas 78759

CFNP Coordinator: Mr. Hector de Leon, Phone: (512) 781-9795

**IDAHO MIGRANT COUNCIL**

Serving: Colorado, Washington, Wyoming, Montana, Utah, Idaho, Oregon

7155 Capitol Boulevard, Suite 406, Boise, Idaho 83706

CFNP Coordinator: Mr. Sam Byrd



DELMARVA RURAL MINISTRIES

Serving: Delaware, Maryland, Pennsylvania,  
Virginia, West Virginia  
Blue Hen Mall, Dover, Delaware 19901  
CFNP Coordinator: Ms. Susan Canning,  
Phone: (302) 678-2000

**Subpart 1061.51—Funding Requirements for Fiscal Year 1981 Crisis Intervention Program**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 45 FR 73890, Nov. 6, 1980, unless otherwise noted.

**§ 1061.51-1 Applicability.**

This subpart is applicable to grants made under section 222(a)(5) of the Economic Opportunity Act 1964, as amended, for Energy Crisis Intervention activities if the assistance is administered by the Community Services Administration.

**§ 1061.51-2 References.**

(a) Section 222(a)(5) of the Economic Opportunity Act of 1964, as amended.

(b) 45 CFR Subpart 1067.40, Applying for a Grant Under Title II, Sections 221, 222(a) and 231 of the Economic Opportunity Act, of 1964, as amended.

(c) 45 CFR Subpart 1050.50, Cost Sharing and Matching.

(d) 45 CFR Subpart 1068.20, Non-Federal Share Requirements for Title II, Sections 221, 222(a) and 231 Programs.

(e) 45 CFR Subpart 1067.4, Standards for Evaluating the Effectiveness of CSA Administered Programs and Projects.

(f) 45 CFR Subpart 1067.7, Due Process Rights For Applicants Denied Benefits Under CSA Funded Programs.

(g) 45 CFR Subpart 1050.80, Monitoring and Reporting Performance.

(h) 45 CFR Subpart 1050.70, Financial Reporting Requirement.

(i) 45 CFR Subpart 1050.160, Procurement Standards.

(j) 45 CFR Part 260, Department of Health and Human Services Social Security Administration, Low Income Energy Assistance Program.

**§ 1061.51-3 Definitions.**

(a) "Household" means any individual or group of individuals who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent.

(b) "Elderly" means persons who are sixty years of age or older.

(c) "Handicapped" means those individuals who meet the definition of "handicapped" individuals as defined in section 7(6) of the Rehabilitation Act of 1973, as amended, that is "any person who (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment" or who are under a disability as defined in section 1614(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Act of 1970, as amended, or who are receiving benefits under Chapter 11 or 15 of Title 38, United States Code.

(d) "SSI Benefits" means Supplemental Security Income benefits under title XVI of the Social Security Act, including mandatory and optional payments that the Department of Health and Human Services administers for a State under Subpart T of 20 CFR Part 416 to supplement Federal benefits, but excluding benefits:

(1) Paid under 20 CFR 416.231 because the beneficiary is living in a Medicaid institution and Medicaid is paying more than 50 percent of the cost of care;

(2) Reduced by one-third under 20 CFR 216.1125(b) because the beneficiary is living in another person's household and is receiving both support and maintenance (food and shelter) from that person and is not paying his pro rata share of food and shelter expenses; or

(3) Paid to a beneficiary who is:

(i) A child for SSI purposes under 20 CFR 416.1050; and

(ii) Living with a parent or with the spouse of a parent.

(e) "AFDC" means Aid to Families with Dependent Children payments

made under title IV-A of the Social Security Act, but not including Foster Care payments under § 233.110 or Emergency Assistance payments to needy families with children under § 233.100.

(f) "Seasonal Farmworker" shall mean a farmworker who during the preceding twelve months has been employed less than 250 days in field or food processing work and who is not a migrant farmworker. This does not include supervisors of other farmworkers.

(g) "Migrant Farmworker" shall mean a person who left home (accepted place of residence) temporarily to do hired field or food processing work which requires travel such that the worker is unable to return home within the same day.

(h) "Indian" means any individual who is a recognized member of a federal or state recognized Indian tribe, Alaskan Native Village or corporation.

(i) "Tribe" or "Indian Tribe" means a distinct community of Indians that exercises powers of self-government and is so recognized by Federal and/or State statute.

#### § 1061.51-4 Background.

(a) \$87.5 million has been authorized to the Director of the Community Services Administration for carrying out energy crisis related activities under Section 222(a)(5) of the Economic Opportunity Act of 1964.

(b) \$3 million of these funds will be set-aside for purposes of outreach activities designed to assure that eligible households with elderly members are aware of the assistance under LIEAP and ECIP.

(c) Eighty percent (80%) of the remaining funds received by CSA will be allocated among the States to eligible applicants as defined in this rule.

(d) The remaining twenty percent (20%) shall be used by CSA to provide such things as training and technical assistance to grantees; to evaluate the program; to support its administration of the program; and to provide grants for special emphasis projects relating to energy and the needs of the poor.

#### § 1061.51-5 Purpose.

This rule details the procedures CSA will utilize to implement the FY 1981 Energy Crisis Intervention Program, and outlines the policies and funding criteria which will govern the expenditure of funds allocated under this program.

#### § 1061.51-6 Policy.

(a) In keeping with Congressional intent, the CSA Energy Crisis Intervention Program (ECIP) is designed to complement HHS's Low Income Energy Assistance Program (LIEAP). The goals of the ECIP are therefore (1) to assure that the LIEAP and other energy-related support networks (e.g. DOE's weatherization projects, public/private funded energy assistance programs etc.) are responsive to the energy needs of the poor; (2) to provide only those crisis intervention activities not readily available through the LIEAP and other support networks; (3) to undertake activities which will lessen the impact of the high cost of energy on the poor; and (4) to develop a local planning capability involving community resources to deal with both short and long range energy issues affecting the poor in the specific community.

(b) This program is not an income transfer program. This program does not entitle any person or household to a certain amount or form of assistance. This program is not to be considered as an alternative to those households which have access to direct assistance through other networks and public and private entities. Although CSA has not established any particular priorities, grantees are encouraged to continue to emphasize program services for the elderly and the handicapped.

#### § 1061.51-7 Who can apply for funds?

(a) All Community Action Agencies (CAA's) are eligible to apply for ECIP funds to undertake crisis intervention activities in their service areas.

(b) CSA Regional Directors will identify existing CSA grantees to undertake crisis intervention activities in those areas of a state not covered by an existing CAA.

(c) Indian Tribes are also eligible to apply for funds to undertake crisis intervention activities for their service areas. If a CSA Regional Director identifies a significant population of Indians that is not self-governed but which would not be able to receive services outlined in this rule due to geographical isolation or other significant factors, he/she may request a waiver from Headquarters to fund this Indian group directly. Waivers will be reviewed on a case by case basis.

(d) The Migrant and Seasonal Farmworker organizations designated as CSA conduits (see Appendix A for names and addresses of organizations) are eligible to apply for funds to undertake crisis intervention activities for Migrant and Seasonal Farmworkers.

(e) Grants made in regard to the remaining 20% [§ 1061.51-4(d)] will be to public and private non-profit organizations and agencies which meet CSA's general eligibility criteria.

**§ 1061.51-8 What can these funds be used for?**

(a) All work programs proposing to undertake energy crisis intervention activities, including emphasis on delivery of the activities to the elderly and handicapped, must include, at a minimum, activities (1) through (4):

(1) *Access.* Grantees must undertake activities to insure that all poor and near poor households are provided access to federal, state or other energy crisis assistance programs. Such activities might include, but are not limited, to the representation of the interests of the poor with utility/fuel vendors, with the program operators of the Low Income Energy Assistance Program (LIEAP), and with the program operators of the Department of Energy's weatherization program.

(2) *Community Mobilization Activities.* Mobilization and organization of community resources to respond to crisis needs within the community.

(i) *Mobilization of Organizations.* Such activities might include, but are not limited to coordination of religious, social service and other community based organizations to become aware and involved in the energy issues affecting the poor and soliciting

their help in ameliorating their effects.

(ii) *Mobilization of Goods and Services.* Such activities might include but are not limited to securing goods, services, and temporary relocation centers from community based merchants, religious, social service and other organizations to respond to the energy needs of the poor during individual emergencies and periods of crises.

(3) *Direct services.* The provision of direct services in the form of goods or services are to be provided only when these direct services are not available from other sources. These services might include, but are not limited to, providing blankets, warm clothing, temporary shelter, energy-related repairs to housing such as patching a roof or replacing a broken window, furnace repairs and space heaters. Grantees are also permitted to make payments of utility/fuel bills as a one-time form of crisis assistance to a household and only after negotiations with utility/fuel vendors and other energy crisis assistance operators (e.g., LIEAP local program operators and other federal, state and local agencies) have failed to resolve the household's crisis and the determination that sufficient, timely and appropriate assistance is not available from any other source. Grantees must document in the applicant's file, the actions taken on behalf of the applicant before authorizing the payment of a utility/fuel bill. In undertaking this activity, grantees must assure that reconnection of utility service or delivery of fuel actually occurs. Funds under this program shall not be used to weatherize houses.

(4) *Community Planning and Education.* Such as, but not limited to comprehensive energy-related planning to benefit the low-income populace of the area, the dissemination of energy conservation information, the conduct of energy conservation education programs and the provision of information on existing energy programs in the community (e.g., information and referral to the LIEAP).

(5) *Alternate Energy Sources.* Constitutes the replacement of or the substantial supplement to a household's source of energy. This activity is being



allowed since grantees may find, in some instances, that the best means of solving an individual household's energy problem is to utilize an alternate energy source.

**§ 1061.51-9 Who can be served by this program?**

(a) *Income Eligibility.* Notwithstanding the provision of 45 CFR 1060.2(a) found at 45 FR 51561 (8/4/80), for purposes of this program, eligibility shall be limited to households whose incomes total no more than 125% of the CSA Income Poverty Guidelines or whose major income earner receives SSI or AFDC payments. (See definition for SSI and AFDC at 1061.51-3 [d] and [e]). No grantee may change these income eligibility guidelines. (See Appendix "B" for CSA Income Poverty Guidelines.)

(b) *Program Eligibility.* Assistance under this program is to be provided only to households not having access to direct assistance of the same type through any other supportive networks, such as the Low-Income Energy Assistance Program (LIEAP), welfare, or other federally funded programs or who have exhausted such assistance, and the household is experiencing or is in danger of experiencing a life threatening or health-related emergency situation and that sufficient, timely and appropriate assistance is not available from any other source.

(c) *Certification of Income Eligibility Required of Grantees.* Proof of income eligibility shall be required of each applicant. The period for determining eligibility will not be more than 12 months or less than 90 days preceding the request for assistance. The determination of what constitutes income shall be based on the CSA Income Poverty Guidelines. In limited instances when proof of income is unavailable, an applicant must sign a declaration of income eligibility in order to receive assistance. In such cases, the local program operator must make a reasonable number of ongoing checks (no less than 10%) to verify income eligibility.

(d) *Income Disregard.* Benefits made available under this program shall not be considered as income or resources of such household (of any member

thereof) for any purposes under any federal or state law, including any law relating to taxation, public assistance or welfare program.

**§ 1061.51-10 Level of assistance.**

(a) The sum of all forms of direct and alternate energy sources assistance under this program made to and/or on behalf of any eligible household under this program may not exceed \$400.

(1) The provision of direct services may not exceed a total of \$200 for any eligible household.

(2) No alternate energy source can exceed a total sum of \$400.

**§ 1061.51-11 How to obtain funds.**

(a) Applications for funds under this program, except for applications submitted by Migrant & Seasonal Farmworker Conduits, must be submitted to the appropriate CSA Regional Office. (See Appendix "C".) Applications by the Migrant & Seasonal Farmworker Conduits must be submitted to the Headquarters Migrant & Seasonal Farmworker Office.

(b) Applications should be received within thirty (30) days from the date of publication of these regulations.

(c) *Contents of application.* (1) The following forms are required as part of the application package:

(i) CSA Form 419, Summary of Work Programs and Budget. This form must address all of the activities outlined under § 1061.51-8 which the applicant is going to undertake. Each activity should be addressed separately with a breakdown for the level of funding to support each activity.

(ii) CAP Form 25, Program Account Budget;

(iii) CAP Form 25a, Program Account Budget Support Sheet; and

(iv) SF 424, Federal Assistance.

(2) When delegating part or all of the work program, the applicant must also submit the following:

(i) CAP Form 85, Administering Agency Funding Estimate;

(ii) CAP Form 87, Delegate Agency Basic Information; and

(iii) CAP Form 11, Assurance of Compliance with Civil Rights.

(d) *Clearinghouse review procedures.* (1) OMB has granted a procedural variation of OMB Circular No. A-95 clearinghouse review procedures for the Energy Crisis Intervention Program for FY '81. Due to the emergency nature of the Program, suggested modifications to an application resulting from clearinghouse comments are to be addressed by a grantee or CSA on a post grant approval basis this fiscal year.

(i) Prospective grantees/applicants must submit a full application, including a summary of work programs, to appropriate state and areawide clearinghouses at the time of submission to CSA. Early contact with the clearinghouses prior to submittal of the application is encouraged to determine if the clearinghouses can be of assistance in identifying areas or individuals in need, current assistance being made available and community, areawide, or state networks available that might assist in responding to energy crisis needs.

(ii) State and areawide clearinghouses shall have a total of 60 days from receipt of an application to conduct notifications and reviews. They will be of assistance to the applicant and to CSA if their reviews address the policy considerations identified in § 1061.51-6 as well as appropriate subject matter of comments and recommendations in item 5, Part I, Attachment A of OMB Circular No. A-95, particularly regarding the coordination of energy planning which relates to the needs of the poor. Clearinghouse comments should be sent to the appropriate CSA Regional Office with a copy to the applicant.

CSA reserves the right to modify a grantee's program if it deems documented clearinghouse comments warrant such action. It is expected that grantees will act in good faith in resolving any issues identified by clearinghouses. In instances where issues cannot be resolved, they should be referred to the CSA Regional Office by the clearinghouse or the grantee.

§ 1061.51-12 Project requirements.

(a) *Project Advisory Committee.* (1) Each applicant shall establish a Pro-

ject Advisory Committee (PAC). However, if the applicant has an existing PAC that is properly constituted, this PAC will satisfy this requirement.

(2) The role of the PAC should include, but not be limited to, the following activities:

(i) Participate in the development of an ongoing review of the proposed work program;

(ii) Recommend to the Grantee board agency policy for the approval or disapproval of requests for the installation of alternate energy sources. The criteria to be used in establishing the policy should include the determination that the installation of the alternate energy source will:

(A) Lessen the impact of the high cost of energy on the household;

(B) Have a significant impact on the household's energy usage pattern; and

(C) Lessen the potential for future energy assistance subsidies.

(iii) Address the energy issues affecting the community as a whole and how they impact upon the poor;

(iv) Make recommendations to the Grantee board on the routine operation of the grantee's crisis intervention program; and

(v) Participate in the development of applications for any future crisis intervention activities.

(3) Membership on the PAC should include at least 51% poor persons as well as representatives of the local governments. The remaining membership should be made up of other energy related resource agencies and organizations, such as energy advocacy organizations, representatives of local public utilities, aging organizations, and local fuel vendors.

(b) *Crisis Intervention Program Coordinator.* A grantee must have at least one energy crisis intervention program (ECIP) coordinator who will be responsible for assuring the implementation of the approved work program. ECIP program funds and other funds from CSA programs may be used to support this position. The ECIP coordinator is expected to mobilize the resources available from other Federal, State and local programs, and cooperate fully. The coordinator is not to assume programmatic or adminis-

trative responsibility for other programs.

(c) *Non-Federal share requirements.* Since this is a program with crisis intervention activities, a matching share is not required. However, grantees are encouraged to mobilize additional resources to supplement and support this program.

(d) *Maintenance of effort.* Assistance provided with funds made available under this program shall be in addition to, and not in substitution for, services previously provided without federal assistance.

(e) *Procedures on denial of assistance.* Grantees are subject to the provisions of 45 CFR § 1067.7 which requires them to have written procedures for the review of the partial or complete denial of assistance to any household or individual.

#### § 1061.51-13 Post funding requirements.

(a) *Financial reporting.* Grantees shall follow normal procedures for submission of the SF-269 and SF-272 outlined in 45 CFR Part 1050, Subpart H.

(b) *Project progress review reports.* Grantees shall also follow normal procedures for the submission of the Project Progress Review Report (CSA Form 440) outlined in 45 CFR Part 1050, Subpart I.

(c) *Audit requirement.* The program including its contracted-out components will be audited at the time of the grantee's regularly scheduled CSA audit.

(d) *Procurement.* The procurement standards outlined in 45 CFR § 1050.160 are applicable to this program.

(e) *Administrative costs.* The grantee may expend up to 10% of the total grant for administrative costs except the ECIP Coordinator's salary may be charged against the ECIP program, other CSA programs and non-CSA funds.

(f) *Prohibition against transfer to another grant.* Funds unobligated at the termination of the grant cannot be transferred by the grantee of record to another grant.

#### § 1061.51-14 Termination of program.

No funds under this program may be obligated after September 30, 1981. For this program, "obligation" shall mean certification for assistance by the program operator of a specific eligible household.

#### APPENDIX A—NAMES AND ADDRESSES OF MIGRANT CONDUITS

##### *Migrant Conduits*

New England Farmworkers Council (Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 6 Frost Street, Springfield, Massachusetts 01105. ECIP Coordinator: Jane Malone, Phone: (413) 781-2145

Rural New York (Serving: New Jersey, New York), 339 East Avenue, Suite 305, Rochester, New York 14604. ECIP Coordinator: Kaven Carney, Phone: (716) 546-7180

Farmworkers Corporation of New Jersey (Serving: Delaware, Maryland, Pennsylvania, Virginia, West Virginia), 1400 West Landes Avenue, Vineland, New Jersey 08360. ECIP Coordinator: Tom Paque, Phone: (609) 691-7101

Mississippi Delta Housing Development Corporation (Serving: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Louisiana), 432 Highway 82 East, P.O. Box 847 Indianola, Mississippi 38751. ECIP Coordinator: Alvin Brown, Phone: (601) 887-4852

Minnesota Migrant Council (Serving: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, South Dakota), P.O. Box 1231, St. Cloud, Minnesota 56301. ECIP Coordinator: Irving (Rich) Echola, Phone: (612) 253-7010

Coloneas Del Valle (Serving: Arkansas, New Mexico, Oklahoma, Texas), P.O. Box 907, San Juan, Texas 78759. ECIP Coordinator: Tony Barco, Phone: (512) 781-9795

ORO Development Corporation (Serving: Iowa, Kansas, Missouri, Nebraska), 1208 Kansas Avenue, Kansas City, Kansas 66105. ECIP Coordinator: Marco Marcano, Phone: (913) 342-2121

North Dakota Migrant Council (Serving: Colorado, Montana, North Dakota, Utah, Wyoming), P.O. Box Drawer X, Grand Forks, North Dakota 58201. ECIP Coordinator: Jerry Nagel, Phone: (701) 746-6494

Campesinos Unidos (Serving: Arizona, California, Nevada), P.O. Box 203, Brawley, California 92227. ECIP Coordinator: Tony Cornejo, Phone: (714) 344-4500

Idaho Migrant Council (Serving: Idaho, Oregon, Washington), 7155 Capitol Boulevard, Suite 406, Boise, Idaho 83706. ECIP Coordinator: Roger deLeon, Phone: (208) 345-9761



### APPENDIX B—CSA POVERTY INCOME GUIDELINES

#### 125 PERCENT OF THE POVERTY-INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

| Size of family unit | Nonfarm family | Farm family |
|---------------------|----------------|-------------|
| 1.....              | \$4,738        | \$4,063     |
| 2.....              | 6,263          | 5,351       |
| 3.....              | 7,788          | 6,639       |
| 4.....              | 9,313          | 7,927       |
| 5.....              | 10,838         | 9,125       |
| 6.....              | 12,363         | 10,503      |

For family units with more than 6 members, add \$1,525 for each additional member in a nonfarm family and \$1,288 for each additional member in a farm family.

#### 125 PERCENT OF THE POVERTY GUIDELINES FOR ALASKA

| Size of family unit | Nonfarm family | Farm family |
|---------------------|----------------|-------------|
| 1.....              | \$5,950        | \$5,113     |
| 2.....              | 7,850          | 6,713       |
| 3.....              | 9,750          | 8,313       |
| 4.....              | 11,650         | 9,913       |
| 5.....              | 13,550         | 11,513      |
| 6.....              | 15,450         | 13,113      |

For family units with more than 6 members, add \$1,900 for each additional member in a nonfarm family and \$1,600 for each additional member in a farm family.

#### 125 PERCENT OF THE POVERTY GUIDELINES FOR HAWAII

| Size of family unit | Nonfarm family | Farm family |
|---------------------|----------------|-------------|
| 1.....              | \$5,463        | \$4,700     |
| 2.....              | 7,213          | 7,650       |
| 3.....              | 8,963          | 7,650       |
| 4.....              | 10,713         | 9,125       |
| 5.....              | 12,463         | 10,600      |
| 6.....              | 14,213         | 12,075      |

For family units with more than 6 members, add \$1,750 for each additional member in a nonfarm family and \$1,475 for each additional member in a farm family.

### APPENDIX C—CSA REGIONAL OFFICE ADDRESSES

Mr. Ivan Ashley, Regional Director, CSA, Region I, E-400, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Phone: (817) 223-4080/FTS-8-223-4080. Boston: Connecticut, Maine, Massachu-

setts, New Hampshire, Rhode Island, Vermont.

Ms. Josephine P. Nieves, Regional Director, CSA, Region II, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Phone: (212) 364-1900/FTS-8-364-1900. New York: New Jersey, New York, Puerto Rico, Virgin Islands.

Dr. W. Astor Kirk, Regional Director, CSA, Region III, Old U.S. Courthouse, P.O. Box 160, 9th and Market Streets, Philadelphia, Pennsylvania 19105, Phone: (215) 597-1139/FTS-8-597-1139. Philadelphia: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Mr. William "Sonny" Walker, Regional Director, CSA, Region IV, 101 Marietta Street NW., Atlanta, Georgia 30303, Phone: (404) 221-2717/FTS-8-242-2717. Atlanta: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Mr. Glenwood Johnson, Regional Director, CSA, Region V, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Phone: (312) 252-5562/FTS-8-353-5562. Chicago: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Mr. Ben T. Haney, Regional Director, CSA, Region VI, 1200 Main Street, Dallas, Texas 75202, Phone: (214) 767-6126/FTS-8-729-6126. Dallas: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Mr. Wayne Thomas, Regional Director, CSA, Region VII, 911 Walnut Street, Kansas City, Missouri 64106, Phone: (816) 374-3761/FTS-8-758-3761. Kansas City: Iowa, Kansas, Missouri, Nebraska.

Mr. David Vanderburgh, Regional Director, CSA, Region VIII, 1961 Stout Street, Federal Building, Denver, Colorado 80294, Phone: (303) 837-4767/FTS-8-327-4767. Denver: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Mr. Alphonse Rodriguez, Regional Director, CSA, Region IX, 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102, Phone: (415) 556-5400/FTS-8-556-5400. San Francisco: Arizona, California, Hawaii, Nevada, Trust Territories.

Mr. N. Dean Morgan, Regional Director, CSA, Region X, 1321 Second Avenue, Seattle, Washington 98101, Phone: (206) 442-4910/FTS-8-399-4910. Seattle: Alaska, Idaho, Oregon, Washington.

### APPENDIX D—CSA NATIONAL FARMWORKERS DESK ADDRESS

Office of Farmworkers Programs, Attn: Mr. Eduardo Gutierrez, 1200 19th Street, NW., Washington, D.C. 20506, Phone: (202) 254-5400.

**Subpart 1061.70—Energy Crisis Assistance Program**

SOURCE: 44 FR 58876, Oct. 11, 1979, unless otherwise noted.

**§ 1061.70-1 Effective date.**

October 11, 1979.

**§ 1061.70-2 Applicability.**

This Subpart is applicable to Energy Crisis Assistance Program (ECAP) grants funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended, if administered by the Community Services Administration and to grants awarded by the Department of Health, Education, and Welfare to supplement ECAP grants made by the Community Services Administration.

[44 FR 76524, Dec. 27, 1979]

**§ 1061.70-3 Policy.**

(a) The primary intent of the program is to make funds available to states to enable Governors to respond to energy-related crises affecting poor and near poor households, which are caused by the high cost of energy and an anticipated severe winter.

(b) This one-time CSA-funded program does not entitle any household to a certain amount and/or form of assistance.

**§ 1061.70-4 Who can apply for funds.**

(a) Governors of each State, Puerto Rico and the Virgin Islands, and the Mayor of the District of Columbia may apply for funds under this program. (Note: All references in this document to "Governor" include the Mayor of the District of Columbia.)

(b) The funds will be distributed by CSA among the States and the District of Columbia according to a formula based on climate, fuel, and low-income population factors. If additional funds for this program become available, CSA may revise the distribution formula if conditions so warrant.

(c) To make a request, the Governor will submit a State Funding Plan to the CSA Regional Office serving his/her state. (See Appendix A). This will begin the formal application process.

(d) For further information regarding the application process see § 1061.70-11.

**§ 1061.70-5 Administration of the program at the State level.**

The Governor may choose any agency to serve as the grantee of record for this program, which meets the following criteria:

(a) Has proven experience in administering, monitoring, or operating programs for the poor;

(b) Will be able to implement the program and provide services in a timely manner throughout the state;

(c) Has a sound fiscal system and proven acceptability of its audits; and

(d) Will be able to comply with CSA's program and financial reporting requirements.

Where there are either administrative or legislative impediments that would prevent an agency at the State level from implementing the delivery of services in a timely manner, CSA will work with the Governor to develop an alternate plan which could include the option of designating more than one grantee for the state.

**§ 1061.70-6 Local administering agency(ies).**

The Governor also has the flexibility to choose the local administering agency(ies), such as community action agencies, aging offices and welfare offices. [Note: This does not preclude using the single state grantee as a deliverer.] However, in making the determination regarding the local operator(s), the Governor must assure that the operator(s) has:

(a) Experience in operating programs that serve the poor;

(b) The ability to carry out, or arrange for the outreach activities outlined in § 1061.70-7; and

(c) An adequate accounting system with appropriate fiscal controls.

**§ 1061.70-7 How a local program is operated.**

(a) *Serving Clients*—(1) *Reaching Potential Clients*. (i) The local administering agency is required to provide assistance to those households that do not have access to other supportive

service networks but are income eligible for this program as well as to those who do have such access.

(ii) To carry out this mandate effectively, local delivery systems must notify, inform, and contact persons, including those individuals receiving unemployment compensation, potentially eligible for this program through, for example, the use of outreach workers, community groups, decentralized intake and certification systems, mass mailings, radio and T.V. spots, use of community newspapers, church bulletins, etc. In the State Funding Plan, the Governor must describe how outreach services will be provided to potential clients eligible for services. Expenses for these activities are to be included as administrative costs.

(2) *Serving the elderly.* On all grants made by CSA highest priority should be placed on serving the elderly. Therefore, local program operators should offer special services. Suggested activities include:

- (i) Intake and certification by mail;
- (ii) Scheduled appointments;
- (iii) Transportation;
- (iv) Use of senior citizen centers for provision of services; and
- (v) Intake and certification in residences for persons unable to leave their residences due to infirmity or fear of victimization.

In the State Funding Plan, the Governor must describe how priority will be given to serving the elderly.

(3) *Serving renters.* This program is also intended to serve renters who are experiencing an energy related crisis. Renters who pay for their fuel indirectly as well as directly are eligible for assistance through ECAP. In the State Funding Plan, the Governor must indicate how renters will be served.

(4) *Heating fuel costs priority.* Priority will be given to those households experiencing significant increases in heating fuel costs over the last year. In establishing such priority grantees should take into consideration the extent to which increases in rent are caused by increases in heating fuel costs.

(5) *Serving American Indians.* This program is also intended to serve American Indians who are not pro-

vided service through the special set-aside program as provided for in Section 1061.70-11(a). State Funding Plans should indicate how such services will be provided.

(b) *Limitations on payments.* The sum of all assistance under this program made to and/or on behalf of any household shall not exceed the actual amount needed to ameliorate the household's energy related problem or \$400 whichever is less, unless a Governor elects to set assistance limits at a higher or lower level and/or provide for varying the maximum assistance level. If the Governor elects to make such a change he/she must provide in the State Funding Plan a justification including the specific criteria used as the basis for changing or varying the limits of assistance level within the state, such as climate, fuel and low-income population. While energy allowances, such as payments to SSI or AFDC recipients under the HEW Energy Assistance Program, received by a household may not be considered as income for purposes of determining income eligibility, any allowances received shall be taken into consideration in determining the assistance to be provided. The total amount of the energy allowances and/or assistance under this program shall not exceed the amount needed to ameliorate the household energy-problem or the maximum level of assistance in the state, whichever is lower.

(c) *Appeal by household which has been denied assistance.* (1) The grantee of record will ensure that each program operator will make known to all applicants procedures for review of the partial or complete denial of assistance under the program to any household. If the agency has an existing process which includes the elements listed below its continued use will satisfy the requirements of this policy.

(2) The state-designed procedures are to be applicable to partial or complete denials of requests for assistance for specific, tangible benefits to low-income households, e.g. utility payments, in-kind assistance, etc. for which the grantee of record currently is receiving CSA funds. The procedures will not apply to such activities



as community organization, information and referral, etc.

(3) For purposes of this policy we will consider that there has been a denial of assistance when the benefits or services and/or funds currently are available, the local program operator has the authority to provide or disburse them, and the applicant falls within or believes that he/she can prove that he/she falls within the income eligibility and established program guidelines.

(4) CSA will provide a model form for States and local program operators to use in designing their intake/application form. CSA will notify the public in the *FEDERAL REGISTER* as soon as possible about this model form.

(5) In addition operators will develop procedures for reviewing denials of assistance which will include:

(i) Provisions for notifying the applicant in writing of the reasons for denial of assistance, that he/she may request a review of the denial and may submit additional information (in writing or orally) which the applicant believes would warrant a favorable determination;

(ii) Provisions for reviewing the denial of an application for assistance in a timely manner if such is requested by the applicant. This should include the specific assignment of responsibility to a senior level official other than the person making the initial determination;

(iii) Provisions for notifying the applicant in writing of the agency's final decision; and

(iv) The methods the agency will employ to publicize the existence of the appeal process.

(6) If the population served by the local program operator includes a sizable non-English speaking group, procedures, written materials, and publicity shall be made available in that language.

(7) A written description of the above required procedures shall be maintained on file by the local program operator and shall be available for public inspection.

(8) All documents relating to specific denials of assistance and action(s) taken will be maintained in the agency's files for the length of time re-

quired by CSA policy on "Retention and Custodial Requirement for Records." These records will be available for review by CSA officials upon request.

[44 FR 58876, Oct. 11, 1979, as amended at 44 FR 76524, Dec. 27, 1979; 45 FR 8303, Feb. 7, 1980]

#### § 1061.70-8 What these funds can be used for.

Funds made available under this program must be used to provide assistance to eligible households to offset the high cost of household energy. Only the following types of assistance can be provided with these funds:

(a) Payments to vendors and suppliers of fuel, goods, and other services. Where an eligible household has paid its fuel bills, level of assistance equal to those bills should be provided in forms of assistance as described in (b), (c), and (d) of this section.

(b) The establishment of lines of credits with fuel/utility vendors for the benefit of eligible households. The Governors may provide limitations on the use of lines of credits such as: limiting the line of credit to the elderly and the handicapped only, establishing a specific duration on a future credit to the elderly and varying the maximum level not to exceed the state approved maximum. The Governor must describe in the State Funding Plan how futures credits will be used in that particular state.

(c) Direct money assistance not to exceed \$50 for the duration of the program to eligible households in those cases where a household is without resources to pay for other necessities as a result of paying utility/fuel bills, or as a means of implementing activities allowable under paragraph (d) of this section. Such payments shall be made by check only and not with coin or currency.

(d) Where necessary to prevent hardship or danger to health, the provision of immediate assistance in the form of goods or services such as emergency fuel deliveries, warm clothing, blankets, temporary shelter, emergency repairs to housing such as patching a roof or replacing a broken window,

food, medicines or other supportive services such as rent. Funds under this program shall not be used to weatherize homes.

[44 FR 58876, Oct. 11, 1979, as amended at 44 FR 76525, Dec. 27, 1979]

**§ 1061.70-9 Who is eligible to participate in this program.**

(a) *Income eligibility.* Households with incomes at or below 125% of the CSA Poverty Guidelines and households whose heads receive SSI shall be eligible for assistance under this program. No state may change these income eligibility guidelines. Receipt of energy allowances shall not preclude eligibility under the Energy Crisis Assistance Program nor shall energy allowances be considered as income in determining income eligibility.

(b) *Program eligibility.* The Governor may specify certain program eligibility criteria by defining what constitutes an energy-related crisis in that particular state. Where a Governor wants to establish such eligibility criteria, he/she must provide an explanation and justification in the State Funding Plan for the eligibility criteria selected as well as a description of the procedures to be used in determining the program eligibility. The Governor may not require proof of unpaid fuel bills or notices of termination of utility service as criteria for eligibility under this program. The Governor also has the option to use income eligibility criteria as the sole eligibility criteria. Energy allowances shall be taken into consideration in determining program eligibility as indicated § 1061.70-7 (b) of this subpart.

(c) *Income Disregard.* Payments made under this program are not to be considered as income or resources for purposes of determining eligibility or benefits under any income maintenance program including, but not limited to public assistance, veterans benefits, food stamps, or Supplemental Security Income.

(d) *Determination of Income Eligibility Required of Grantees.* Proof of income eligibility is required. The period for determining eligibility will be not more than 12 months nor less than the 90 day period preceding the

request for assistance. When proof of eligibility is unavailable, an applicant must sign a declaration of income eligibility. In such cases, the local program operator must make a reasonable number of spot checks to verify income eligibility.

[44 FR 58876, Oct. 11, 1979, as amended at 44 FR 76525, Dec. 27, 1979; 45 FR 8303, Feb. 7, 1980]

**§ 1061.70-10 Termination of program.**

No funds under this program may be obligated after June 30, 1980. For this program "obligation" shall mean certification for assistance by the program operator of a specific eligible household.

[44 FR 76525, Dec. 27, 1979]

**§ 1061.70-11 How a Governor requests funds.**

(a) Applications for funds under this program will be for statewide coverage. CSA will establish set-asides to serve Native Americans and farm-worker groups.

(b) Within 15 calendar days of the effective date of this subpart, the Governor will submit a State Funding Plan to the appropriate CSA Regional Office with all the information required in section 1061.70-16. The State Funding Plan must provide a timetable indicating when services will be provided at the local level.

(c) CSA requested from OMB a complete waiver of the clearinghouse review procedures for the FY 80 Energy Crisis Assistance Program. OMB has granted a waiver under the following conditions transmitted in a letter dated August 29, 1979:

(1) The Governor's State Funding Plan will be subject to modified procedures of Part III of A-95. To the fullest practicable degree, the State agency responsible for development of the plan will involve the State clearinghouse in the development phase. Where such early coordination is not possible, the plan will be sent to the State clearinghouse not later than simultaneously with the submission of the plan to CSA;

(2) The State clearinghouse will determine the degree to which areawide clearinghouses should be involved in

the review process and a normal 45 day review period will be afforded, on an *after the fact* basis;

(3) CSA's approval of the State Funding Plan will be conditional, in that the State plan may be subject to possible subsequent revision to accommodate any appropriate recommendations for its modification as provided by clearinghouses in the A-95 review process. The State operating agency will be instructed to make every effort to accommodate such recommendations and will provide appropriate clearinghouses with a statement as to its final judgment on each recommendation. As a result of this requirement CSA must require that any revisions made to the State Funding Plan be submitted to the appropriate CSA Regional Office for approval;

(4) CSA will provide State and appropriate areawide clearinghouses, via Standard Form 424, with an information copy of the "block" grant award to the State agency receiving the funds;

(5) In addition the State agency will provide, for each "sub-state" project grant award, information to the State and appropriate areawide clearinghouses as to the amount of monies awarded, to whom, and the purpose of each award. For these sub-state award notifications the use of Standard Form 424 is encouraged but is not mandatory.

(d) If a state fails to submit a State Funding Plan within 15 calendar days of the effective date of these regulations or if a submitted plan is not acceptable for approval, CSA may develop and implement a plan for the state.

#### § 1061.70-12 General funding policies.

(a) *Matching Share.* A matching share is not required for this program. However, states and local program operators are encouraged to mobilize additional resources to supplement and support this program.

(b) *Maintenance of Effort.* Resources for similar services scheduled to be provided this heating season under state and local authorities shall not be reduced because of this program nor shall this program be used as a substitute for such services. The Director of CSA may make exceptions only in

those situations where a strict application of this requirement would result in unnecessary hardship or be inconsistent with the purposes of the Energy Crisis Assistance Program.

(c) *Administrative Costs.* The grantee of record may expend up to 10% of the total state grant for administrative and program support costs. Where the grantee has contracted out performance of all or part of the work program, such as outreach, grantee must provide a reasonable portion of these administrative funds to those program operators to enable them to administer the program.

(d) *Overexpenditures.* If the grantee of record incurs expenditures in excess of the total amount of the approved grant, the amount of the overexpenditure must be absorbed by the grantee of record.

(e) *Procurement.* In accordance with OMB Circulars A-110 and A-102 all proposed sole source contracts where only one bid or proposal is received in which the aggregate expenditure is expected to exceed \$5,000 must receive prior approval by the appropriate CSA Regional Office.

#### § 1061.70-13 Post-funding requirements.

(a) *Audit.* The grantee of record will not be required to have a separate audit of this program. The program including its contracted-out components will be audited at the time of the grantee of record's regularly scheduled audit. Five copies of the audit shall be submitted by the auditor to the appropriate CSA Regional Auditor concurrent with submission to the grantee of record.

(b) *Project Reporting.* The grantee of record is required to submit a Project Progress Review Report, CSA Form 440 on a quarterly basis to cover activities performed in this program. Grantees will also submit bi-weekly, until January 30, 1980 the following information in addition to the other reporting requirements: total number of households assisted, total number of individuals assisted, total number of elderly-headed households assisted, total dollars obligated for heating/fuel bills, total dollars obligated for other purposes.



(c) *Financial Reporting.* The grantee of record must submit a separate Standard Form 269, Financial Status Report, and a Standard Form 272, Federal Cash Transactions Report, covering activities for this program on a quarterly basis with a final report due 90 days after the end of the program. The grantee of record shall follow these procedures for submission of the Standard Form 269 and the Standard Form 272: One copy of each to the appropriate CSA Regional Office, one copy of each to Grants Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street, N.W., Washington, D.C. 20506, and one copy of each to Energy Crisis Assistance Task Force, 2000 K Street, N.W., Suite 350, Washington, D.C. 20006.

(d) *Evaluation.* In the event that CSA undertakes a national evaluation of this program, the cooperation of the grantee of record, the local program operators, and that of participating utility/fuel vendors will be requested.

(e) *Prohibition against transfer to another grant.* Funds unobligated at the termination of the grant cannot be transferred by the grantee of record to another grant.

[44 FR 58876, Oct 11, 1979; 45 FR 8303, Feb. 7, 1980]

**§ 1061.70-14 CSA application review and approval process.**

(a) CSA Regional Directors are delegated the authority for final approval of grants under this program.

(b) Based on a uniform review process, Regional Directors will determine the adequacy of State Funding Plans.

(c) Once a plan has been approved by the Regional Director, Regional Offices will expedite the processing and forward the Statement of CSA Grant (CSA Form 314) to the grantee of record chosen by the Governor. Upon receiving the CSA Form 314, the grantee of record must sign it and return it to the CSA Regional Office.

(d) A state may amend its State Funding Plan only with the prior approval of the appropriate CSA Regional Director.

(e) When a state deviates from its approved state plan, without CSA ap-

proval, upon investigation, CSA will take appropriate action.

**§ 1061.70-15 Coordination with utility/fuel vendors.**

The Governor must ensure that in each case where payment is certified that:

(a) Reconnection of utilities and/or delivery of fuel is made upon certification for payment;

(b) For any remaining balances, the customer is offered a deferred payment arrangement or a level payment plan;

(c) A reconnection charge is paid only where such a charge was company practice prior to September 1, 1979; and

(d) No security deposit is required to be paid except where such a deposit was required by state law or explicit state regulations prior to September 1, 1979 and, where required by law or regulation is included in a deferred payment arrangement.

**§ 1061.70-16 State Funding Plans.**

The Governor will submit a State Funding Plan to the appropriate CSA Regional Office. The State Funding Plan will include the following:

(a) A letter from the Governor waiving the 30-day comment period and a request for a specific amount of funds.

(b) The following elements as described in this subpart:

- (1) State Administering Agency.
- (2) Local Administering Agency(ies).
- (3) Timetable for Implementation.
- (4) Outreach Activities.
- (5) Elderly Priority.
- (6) Renters.
- (7) Program Guidelines.
- (8) Appeals Process.

(c) Information on the following:

(1) A plan for monitoring to ensure immediate investigation, and, if warranted, redress in cases of poor administration of the program, faulty and/or inadequate eligibility certification, duplication and fraud.

(2) A summary of administrative costs and the activities to be performed.

(3) A list of the areas to be served by the program, the distribution of funds

by area, and the specific factors used in making the allocation.

(4) A plan for providing management and fiscal technical assistance to the local administering agencies.

#### APPENDIX A—CSA REGIONAL OFFICE ADDRESSES

Mr. Ivan Ashley, Regional Director, CSA Region I, E-400, John F. Kennedy Fed. Bldg., Boston, Massachusetts 02203, Phone: (617) 223-4080/FTS-8-223-4080, Boston: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Mr. John C. Finley, Acting Regional Director, CSA Region II, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Phone: (212) 264-1900/FTS-8-264-1900, New York: New Jersey, New York, Puerto Rico, Virgin Islands.

Dr. W. Astor Kirk, Regional Director, CSA Region III, Old U.S. Courthouse, P.O. Box 160, 9th and Market Streets, Philadelphia, Pennsylvania 19105, Phone: (215) 597-1139/FTS-8-597-1139, Philadelphia: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Mr. William "Sonny" Walker, Regional Director, CSA Region IV, 101 Marietta Street NW., Atlanta, Georgia 30303, Phone: (404) 221-2717/FTS-8-242-2717, Atlanta: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Mr. Glenwood Johnson, Regional Director, CSA Region V, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Phone: (312) 353-5562/FTS-8-353-5562, Chicago: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Mr. Ben T. Haney, Regional Director, CSA Region VI, 1200 Main Street, Dallas, Texas 75202, Phone: (214) 767-6126/FTS-8-729-6126, Dallas: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Mr. Wayne Thomas, Regional Director, CSA Region VII, 911 Walnut Street, Kansas City, Missouri 64106, Phone: (816) 374-3761/FTS-8-758-3761, Kansas City: Iowa, Kansas, Missouri, Nebraska.

Mr. David Vanderburgh, Regional Director, CSA Region VIII, 1961 Stout Street, Federal Building, Denver, Colorado 80294, Phone: (303) 837-4767/FTS-8-327-4767, Denver: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Mr. Alphonse Rodriguez, Regional Director, CSA Region IX, 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102, Phone: (415) 556-5400/FTS-8-556-5400, San Francisco: Arizona, California, Hawaii, Nevada, Trust Territories.

Mr. N. Dean Morgan, Regional Director, CSA Region X, 1321 Second Avenue, Seattle, Washington 98101, Phone: (206) 442-4910/FTS-8-399-4910, Seattle: Alaska, Idaho, Oregon, Washington.

#### APPENDIX B—COMMUNITY SERVICES ADMINISTRATION

##### 125% OF POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

| Size of family unit | Non-farm family | Farm family |
|---------------------|-----------------|-------------|
| 1.....              | \$4,250         | \$3,638     |
| 2.....              | 5,625           | 4,800       |
| 3.....              | 7,000           | 5,963       |
| 4.....              | 8,375           | 7,125       |
| 5.....              | 9,750           | 8,288       |
| 6.....              | 11,125          | 9,450       |

For family units with more than 6 members, add \$1,375 for each additional member in a non-farm family and \$1,163 for each additional member in a farm family.

##### POVERTY GUIDELINES FOR ALASKA

| Size of family unit | Non-farm family | Farm family |
|---------------------|-----------------|-------------|
| 1.....              | \$5,338         | \$4,562     |
| 2.....              | 7,050           | 6,013       |
| 3.....              | 8,763           | 7,463       |
| 4.....              | 10,475          | 8,913       |
| 5.....              | 12,188          | 10,363      |
| 6.....              | 13,900          | 11,813      |

For family units with more than 6 members, add \$1,713 for each additional member in a non-farm family and \$1,450 for each additional member in a farm family.

##### POVERTY GUIDELINES FOR HAWAII

| Size of family unit | Non-farm family | Farm family |
|---------------------|-----------------|-------------|
| 1.....              | \$4,913         | \$4,188     |
| 2.....              | 6,488           | 5,525       |
| 3.....              | 8,063           | 6,863       |
| 4.....              | 9,638           | 8,200       |
| 5.....              | 11,213          | 9,538       |
| 6.....              | 12,788          | 10,875      |

For family units with more than 6 members, add \$1,575 for each additional member in a non-farm family and \$1,338 for each additional member in a farm family.

## APPENDIX C

OFFICE OF ECONOMIC OPPORTUNITY  
Community Action Program

**Assurance of Compliance with the Office of  
Economic Opportunity's Regulations under  
Title VI of the Civil Rights Act of 1964**

\_\_\_\_\_  
(Name of Applicant or Delegate Agency) (hereinafter called the "Applicant")

AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the Regulations of the Office of Economic Opportunity issued pursuant to that title (45 C.F.R. Part 1010), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance either directly or indirectly from the Office of Economic Opportunity; and HEREBY GIVES ASSURANCE THAT it will immediately, in all phases and levels of programs and activities, install an affirmative action program to achieve equal opportunities for participation, with provisions for effective periodic self-evaluation.

In the case where the Federal financial assistance is to provide or improve or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the Applicant, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the Applicant retains ownership or possession of the property, whichever is longer. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining either directly or indirectly any and all Federal grants, loans, contracts, property, or discounts, the referral or assignment of VISTA volunteers, or other Federal financial assistance extended after the date hereof to the Applicant by the Office of Economic Opportunity, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Applicant or Delegate Agency)

By \_\_\_\_\_  
(President, Chairman of Board, or comparable  
authorized official)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Mailing Address)



## APPENDIX D

## CERTIFICATE OF APPLICANT'S ATTORNEY

(For Health Demonstration Programs under Section 222, Research and Pilot Programs under Section 232, and Special Impact Programs under Section 151 of the Economic Opportunity Act)

Form Approved  
OMB No. 115-R0190

This certificate is required when applying for a new grant; or upon CSA's request, for the continuation of an existing grant.

## 1. NAME OF APPLICANT AGENCY

## 2. IS THE APPLICANT AN INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 801(F) OF THE HIGHER EDUCATION ACT OF 1963, PUBLIC LAW 88-204?

☐ YES☐ NOIF "YES", WAS IT IN EXISTENCE ON AUGUST 20, 1964? ☐ YES ☐ NO

## 3. THE APPLICANT IS

☐ A PUBLIC AGENCY☐ AN ORGANIZATION CHARTERED AS A NONPROFIT CORPORATION UNDER THE LAWS OF THE STATE OF \_\_\_\_\_☐ A NONPROFIT UNINCORPORATED ASSOCIATION.☐ OTHER (Explain in Item 6, below.)

## 4. IF THE APPLICANT IS A NONPROFIT ORGANIZATION, INDICATE WHETHER IT HOLDS A CURRENT RULING FROM THE INTERNAL REVENUE SERVICE THAT IT IS TAX EXEMPT

☐ YES (Date of Ruling) \_\_\_\_\_☐ NO

## 5. IF ANSWER TO ITEM 4, ABOVE, IS "NO"

## A. IS IT YOUR OPINION THAT THE APPLICANT QUALIFIES FOR SUCH A RULING?

☐ YES☐ NO

## B. HAS ANY OFFICIAL OF THE INTERNAL REVENUE SERVICE INDICATED THAT THE APPLICANT MAY NOT QUALIFY FOR SUCH A RULING?

☐ YES (Explain in Item 6, below.)☐ NO

## 6. REMARKS

## 7. OPINION

In my opinion, the above information accurately describes the applicant agency, and that agency has the authority, under applicable principles of law, to carry out the program described in this application.

TYPED NAME OF ATTORNEY

MEMBER OF THE BAR OF  
(State)

SIGNATURE

ADDRESS

DATE

## APPENDIX E

|                                                                                                                                                                                                                                                                             |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COMMUNITY SERVICES ADMINISTRATION<br><b>PROJECT PROGRESS REVIEW REPORT</b>                                                                                                                                                                                                  |               | (Check applicable box)<br><input type="checkbox"/> 1st Qtr. <input type="checkbox"/> ANNUAL<br><input type="checkbox"/> 2nd Qtr. <input type="checkbox"/><br><input type="checkbox"/> 3rd Qtr. <input type="checkbox"/> FINAL | Page ____ of ____<br>OMB No. 116-R0327<br>Approval expires August 1980<br>DATE SUBMITTED _____<br>GRANTEE NO. _____<br><div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 auto;"></div> |
| NAME OF GRANTEE                                                                                                                                                                                                                                                             |               | STANDARD(S) OF EFFECTIVENESS (No.) _____                                                                                                                                                                                      |                                                                                                                                                                                                                 |
| PROGRAM ACCOUNT                                                                                                                                                                                                                                                             | PROJECT TITLE |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| PROJECT GOAL                                                                                                                                                                                                                                                                |               | STANDARD(S) OF EFFECTIVENESS (No.) _____                                                                                                                                                                                      |                                                                                                                                                                                                                 |
| 1. ACCOMPLISHMENTS                                                                                                                                                                                                                                                          |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| A. MEASURABLE                                                                                                                                                                                                                                                               |               | STANDARD(S) OF EFFECTIVENESS (No.) _____                                                                                                                                                                                      |                                                                                                                                                                                                                 |
| B. NON-QUANTIFIABLE                                                                                                                                                                                                                                                         |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| 2. PROBLEMS                                                                                                                                                                                                                                                                 |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| 3. PLANNED CHANGES *                                                                                                                                                                                                                                                        |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| 4. TRAINING & TECHNICAL ASSISTANCE NEEDS *                                                                                                                                                                                                                                  |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| 5. ASSESSMENT OF EFFECTIVENESS                                                                                                                                                                                                                                              |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| * Do not complete when filing final report or in annual reports for individual projects which will not be refunded.                                                                                                                                                         |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| <b>CERTIFICATION</b>                                                                                                                                                                                                                                                        |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| The undersigned certifies that this report has been completed in accordance with applicable instructions; that it is true to the best of his/her knowledge, information and belief; and that it has been approved, or reviewed and approved, as indicated in Item 6, below. |               |                                                                                                                                                                                                                               |                                                                                                                                                                                                                 |
| 6. THIS REPORT HAS BEEN (Check appropriate box.)<br><input type="checkbox"/> APPROVED BY GRANTEE'S GOVERNING BOARD <input type="checkbox"/> REVIEWED BY GRANTEE'S ADMINISTERING BOARD AND APPROVED BY ITS GOVERNING OFFICIALS                                               |               | 7. DATE OF APPROVAL _____                                                                                                                                                                                                     |                                                                                                                                                                                                                 |
| 8. TYPED NAME & TITLE OF PRINCIPAL GOVERNING OFFICIAL OR PRINCIPAL OFFICER OF GOVERNING BOARD _____                                                                                                                                                                         |               | 9. SIGNATURE _____                                                                                                                                                                                                            |                                                                                                                                                                                                                 |
| 10. DATE _____                                                                                                                                                                                                                                                              |               | 11. DATE _____                                                                                                                                                                                                                |                                                                                                                                                                                                                 |

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## APPENDIX F

| FINANCIAL STATUS REPORT<br>(Follow instructions on the back)                                                                                         |     | 1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED                                                                                                                   |     | 2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER                                                                                                                                                                            |     | OMB Approved<br>No. 80-RO180                                                |           | PAGE OF                                                                    |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------------------------------------|-----------|----------------------------------------------------------------------------|--|
| 3. RECIPIENT ORGANIZATION (Name and complete address, including ZIP code)                                                                            |     | 4. EMPLOYER IDENTIFICATION NUMBER                                                                                                                                                           |     | 5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER                                                                                                                                                                       |     | 6. FINAL REPORT<br><input type="checkbox"/> YES <input type="checkbox"/> NO |           | 7. BASIS<br><input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL |  |
|                                                                                                                                                      |     | 8. PROJECT/GRANT PERIOD (See instructions)<br>FROM (Month, day, year) TO (Month, day, year)                                                                                                 |     | 9. PERIOD COVERED BY THIS REPORT<br>FROM (Month, day, year) TO (Month, day, year)                                                                                                                                       |     |                                                                             |           |                                                                            |  |
| 10. STATUS OF FUNDS                                                                                                                                  |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| PROGRAMS/FUNCTIONS/ACTIVITIES ▶                                                                                                                      | (a) | (b)                                                                                                                                                                                         | (c) | (d)                                                                                                                                                                                                                     | (e) | (f)                                                                         | TOTAL (g) |                                                                            |  |
| a. Net outlays previously reported                                                                                                                   | \$  | \$                                                                                                                                                                                          | \$  | \$                                                                                                                                                                                                                      | \$  | \$                                                                          | \$        |                                                                            |  |
| b. Total outlays this report period                                                                                                                  |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| c. Less: Program income credits                                                                                                                      |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| d. Net outlays this report period<br>(Line b minus line c)                                                                                           |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| e. Net outlays to date<br>(Line a plus line d)                                                                                                       |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| f. Less: Non-Federal share of outlays                                                                                                                |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| g. Total Federal share of outlays<br>(Line e minus line f)                                                                                           |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| h. Total unliquidated obligations                                                                                                                    |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| i. Less: Non-Federal share of unliquidated obligations shown on line h                                                                               |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| j. Federal share of unliquidated obligations                                                                                                         |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| k. Total Federal share of outlays and unliquidated obligations                                                                                       |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| l. Total cumulative amount of Federal funds authorized                                                                                               |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| m. Unobligated balance of Federal funds                                                                                                              |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           |                                                                            |  |
| 11. INDIRECT EXPENSE                                                                                                                                 |     | a. TYPE OF RATE<br>(Place "X" in appropriate box) <input type="checkbox"/> PROVISIONAL <input type="checkbox"/> PREDETERMINED <input type="checkbox"/> FINAL <input type="checkbox"/> FIXED |     | 13. CERTIFICATION<br>I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents. |     | SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL                                 |           | DATE REPORT SUBMITTED                                                      |  |
| b. RATE                                                                                                                                              |     | c. BASE                                                                                                                                                                                     |     | d. TOTAL AMOUNT                                                                                                                                                                                                         |     | e. FEDERAL SHARE                                                            |           | TYPED OR PRINTED NAME AND TITLE                                            |  |
| 12. REMARKS: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation. |     |                                                                                                                                                                                             |     |                                                                                                                                                                                                                         |     |                                                                             |           | TELEPHONE (Area code, number and extension)                                |  |



## INSTRUCTIONS

Please type or print legibly. Items 1, 2; 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

| Item | Entry                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Item | Entry                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4    | Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 10c  | Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income. |
| 5    | This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 10f  | Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 8    | Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 10h  | Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are:<br><br>Cash basis—obligations incurred but not paid;<br><br>Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded.<br><br>Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.                                                                                         |
| 10   | The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency. | 10j  | Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.                                                                                                                                                                                                                                                                                                                                                                                                      |
| 10a  | Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 10k  | Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 10b  | Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.                                                                                                                                                                                                                                                                                                          | 10m  | Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 11b  | Enter rate in effect during the reporting period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 11c  | Enter amount of the base to which the rate was applied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 11d  | Enter total amount of indirect cost charged during the report period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 11e  | Enter amount of the Federal share charged during the report period.<br><br>If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.                                                                                                          |

## APPENDIX G

| FEDERAL CASH TRANSACTIONS REPORT                                                                                                    |                                                | Approved by Office of Management and Budget, No. 50-R0152                                 |                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------|
| (See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.) |                                                | 1. Federal sponsoring agency and organizational element to which this report is submitted |                                                        |
| 2. RECIPIENT ORGANIZATION                                                                                                           |                                                | 4. Federal grant or other identification number                                           | 5. Recipient's account number or identifying number    |
| Name                                                                                                                                |                                                | 6. Letter of credit number                                                                | 7. Last payment voucher number                         |
| Number and Street                                                                                                                   |                                                | Give total number for this period                                                         |                                                        |
| City, State and ZIP Code                                                                                                            |                                                | 8. Payment Vouchers credited to your account                                              | 9. Treasury checks received (whether or not deposited) |
| 3. FEDERAL EMPLOYER IDENTIFICATION NO.                                                                                              |                                                | 10. PERIOD COVERED BY THIS REPORT                                                         |                                                        |
|                                                                                                                                     |                                                | FROM (month, day, year)                                                                   | TO (month, day year)                                   |
| 11. STATUS OF<br><br>FEDERAL<br><br>CASH<br><br>(See specific instructions on the back)                                             | a. Cash on hand beginning of reporting period  | \$                                                                                        |                                                        |
|                                                                                                                                     | b. Letter of credit withdrawals                |                                                                                           |                                                        |
|                                                                                                                                     | c. Treasury check payments                     |                                                                                           |                                                        |
|                                                                                                                                     | d. Total receipts (Sum of lines b and c)       |                                                                                           |                                                        |
|                                                                                                                                     | e. Total cash available (Sum of lines a and d) |                                                                                           |                                                        |
|                                                                                                                                     | f. Gross disbursements                         |                                                                                           |                                                        |
|                                                                                                                                     | g. Federal share of program income             |                                                                                           |                                                        |
|                                                                                                                                     | h. Net disbursements (Line f minus line g)     |                                                                                           |                                                        |
|                                                                                                                                     | i. Adjustments of prior periods                |                                                                                           |                                                        |
|                                                                                                                                     | j. Cash on hand end of period                  | \$                                                                                        |                                                        |
| 12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING                                               | 13. OTHER INFORMATION                          |                                                                                           |                                                        |
| Days                                                                                                                                | a. Interest income                             | \$                                                                                        |                                                        |
|                                                                                                                                     | b. Advances to subgrantees or subcontractors   | \$                                                                                        |                                                        |
| 14. REMARKS (Attach additional sheets of plain paper, if more space is required)                                                    |                                                |                                                                                           |                                                        |

| 15. CERTIFICATION                                                                                                                                                                             |                     |                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|------------------------------------------|
| I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement. | AUTHORIZED          | SIGNATURE                                |
|                                                                                                                                                                                               | CERTIFYING OFFICIAL | TYPED OR PRINTED NAME AND TITLE          |
|                                                                                                                                                                                               |                     | DATE REPORT SUBMITTED                    |
|                                                                                                                                                                                               |                     | TELEPHONE (Area Code, Number, Extension) |

THIS SPACE FOR AGENCY USE

## INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

| Item | Entry                                                                                                                                                                                                                                                                                                                           | Entry | Item                                                                                                                                                                                                                                                                                                                                                                       |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3    | Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code.<br><br>If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272-A, Report of Federal Cash Transactions—Continued; otherwise: |       | employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.                                                                                                                                                                                       |
| 4    | Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.                                                                                                                                                                                                                   | 11g   | Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.                                                                                                                                                                                                                                   |
| 5    | This space reserved for an account number or other identifying number that may be assigned by the recipient.                                                                                                                                                                                                                    | 11i   | Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.                                      |
| 6    | Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.                                                                                                                                                        | 11j   | Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).                                                                                                                                                      |
| 7    | Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.                                                                                                                                                                                                        | 12    | Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances. |
| 11a  | Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.                                                                                                                                          | 13a   | Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.                                                                              |
| 11b  | Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.                                                                                                                                                                           | 13b   | Enter amount of advance to secondary recipients included in item 11h.                                                                                                                                                                                                                                                                                                      |
| 11c  | Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.                                                                                                                                                                                             | 14    | In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.                                                                                  |
| 11f  | Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the                   |       |                                                                                                                                                                                                                                                                                                                                                                            |



## ACCOUNTING SYSTEM CERTIFICATION

(OEO Instructions - 6001-1)

## APPENDIX H

ADDRESS (OEO Program Office/Region)

## SECTION I. STATEMENT OF PUBLIC FINANCIAL OFFICER (If the applicant is a Public Agency or when the Accounting System of a Private-nonprofit Agency will be maintained by a Public Agency.)

I am the Chief Financial Officer of \_\_\_\_\_  
(NAME OF PUBLIC AGENCY)and, in this capacity, I will be responsible for providing financial services adequate to insure the establishment and maintenance of an accounting system for \_\_\_\_\_  
(NAME OF APPLICANT)

which is a public (or nonprofit) agency charged with carrying out an OEO program in \_\_\_\_\_

\_\_\_\_\_  
(NAME OF COMMUNITY) The accounting system will have internal controls adequate to safeguard the assets of such agency(ies), check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency(ies).

NAME OF PUBLIC AGENCY

TYPED NAME OF FINANCIAL OFFICER

SIGNATURE

DATE

## SECTION II. STATEMENT OF PUBLIC ACCOUNTANT (If applicant is a Private-nonprofit Agency or a Public Agency whose accounting system will not be maintained by a Public Agency.)

I am a certified or duly licensed public accountant and have been engaged to examine and report on the financial accounts of the \_\_\_\_\_, which is a private-nonprofit organization (or public agency) carrying out an OEO program in \_\_\_\_\_  
(NAME OF APPLICANT)  
(NAME OF COMMUNITY)

I have reviewed the accounting system that this agency has established and, in my opinion, it includes internal controls adequate to safeguard the assets of the agency, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency.

NAME OF FIRM

TYPED NAME OF ACCOUNTANT

SIGNATURE

DATE

**Subpart 1061.90—State Agency Assistance Funded Under Section 231 of the Economic Opportunity Act**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 45 FR 74929, Nov. 13, 1980, unless otherwise noted.

**§ 1061.90-1 Applicability.**

This subpart is applicable to grants, contracts, and cooperative agreements funded under Section 231 of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

**§ 1061.90-2 Purpose.**

The purpose of this subpart is to provide to State Governors criteria by which they may choose a State agency as the agency eligible to apply to the Community Services Administration for funds under Section 231 of the Economic Opportunity Act of 1964, as amended (EOA). This subpart also details the goals which are to be addressed with funds provided under Section 231; pre-funding requirements; the application process; and post-funding requirements.

**§ 1061.90-3 Timeframe for implementation of rule.**

The provisions of this rule are applicable to any agency funded after [30 days following publication in the FEDERAL REGISTER]. For existing grantees the provisions of this rule will be effective for awards made on or after July 1, 1981. However, earlier implementation is permitted by mutual agreement between the Governor and the CSA Regional Office which funds and administers the grant.

**§ 1061.90-4 Procedures for selecting a State agency to receive assistance under Section 231 of the EOA.**

(a) *How a State agency is selected.* The Governor of a State may select a State agency within his or her State as the agency which will carry out those anti-poverty efforts described in this rule. The agency so selected by the Governor will be considered by CSA to be the State agency to receive Section 231 funds and to perform the work

program under the policies in this subpart until the Governor notifies CSA of his or her selection of a successor agency. State agencies receiving Section 231 funds as of [30 days following publication in the FEDERAL REGISTER] will continue to be recognized by CSA as the State agency selected by the Governor unless CSA is otherwise notified. The agency which the Governor selects will be the agency to whom prior notification of financial assistance under Section 242 will be provided. The agency selected must be one (1) whose Director has direct line authority and responsibility for implementing the goals of a CSA-approved work program; (2) which has direct organizational access to the Governor for the purposes of carrying out the goals of the CSA-approved work program; (3) which has the demonstrated ability to mobilize State and Federal resources in support of the anti-poverty efforts of Community Action Agencies and other anti-poverty groups; and (4) which has proven experience in planning, coordinating, administering or operating programs for the poor.

(b) *Determination of eligibility.* Sixty days prior to submission of an application for funding the agency selected by the Governor will be responsible for providing the appropriate CSA Regional Office with documents and other data and information by which the CSA Regional Director can verify eligibility of the agency. These supporting documents must address each of the elements described in (a)(1) through (4) above.

**§ 1061.90-5 Goals and eligible activities.**

(a) *Mandated goals for all work programs.* CSA recognizes that States differ in their constitutional, statutory and organizational patterns. States also differ in terms of resources available, the causes of poverty, and the resulting programs. However, regardless of these differences CSA believes that the following are valid anti-poverty goals for all States. Therefore, Goals #1 through #5 listed below, along with their selected activities, must be addressed in all work programs:

(1) *Goal #1:* To increase the amounts and kinds of Federal, State and private resources available for anti-poverty activities within a State.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Seeking out, developing or assisting in the development of every State, local, Federal and non-Federal resource that can be marshalled effectively and/of coordinated to assist poor persons, Community Action Agencies, State community action associations, and other anti-poverty efforts within the State.

(B) Developing and carrying out strategies for obtaining additional resources for new and existing anti-poverty activities.

(C) Initiating or stimulating the development and implementation of anti-poverty programs which are needed and not being provided adequately in the State.

(D) Promoting the utilization of all available State resources by making necessary information and support available to poor persons.

(2) *Goal #2:* To strengthen State capabilities for planning and coordinating in order to insure that available assistance related to the elimination of poverty can be more responsive to the needs and conditions of the poor within a State.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Promoting the maximum feasible participation of poor people in the planning, conduct and evaluation of other State agency operations and programs which affect the poor.

(B) Developing interagency mechanisms at the State and local program level to insure good communications between State and local agencies, particularly Community Action Agencies and State community action associations, and other agencies and offices whose activities affect the poor.

(C) Developing a formal mechanism by which to advise departments of State government of the capabilities of Community Action Agencies and other CSA-funded anti-poverty groups to assist State agencies in their anti-poverty efforts.

(D) Working for representation of poor persons on State committees and other entities which develop policy, provide advice or operate programs affecting the poor.

(3) *Goal #3:* To assure that the Governor has current and expert advice and information on poverty problems and anti-poverty efforts within the State.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Providing the Governor with information and advice with respect to the policies and programs of the Community Services Administration and other anti-poverty resources.

(B) Providing the Governor, the State legislature, and other state agencies with information on the causes and conditions of poverty in the State.

(C) Advising the Governor on the status and impact of State and Federal programs and services affecting poor individuals in the State.

(D) Assisting the Governor in carrying out the provisions of Section 242 of the EOA.

(E) Drafting an Annual Report on Poverty in the State for delivery by the Governor to the State legislature and to the citizens of the State.

(4) *Goal #4:* To serve as the major point of intergovernmental contact between CSA and other State agencies, with the exception of the Governor.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Communicating to CSA on a regular basis major state anti-poverty policies, concerns of State government officials about CSA or other Federal anti-poverty efforts, and information about successful state government approaches to anti-poverty problems.

(B) Explaining CSA policies and programs to other state agencies, setting up appropriate meetings between CSA and state officials, and officially advising CSA of program operation capabilities of state agencies which may be designated to receive CSA funds other than those under Section 231.

(5) *Goal #5:* To support the implementation of the mandatory Goals [§ 1061.90-5(a)(1)-(5)] through the



provision of training and technical assistance to community action agencies, state community action associations, and other local anti-poverty organizations.

(i) Acceptable activities in achieving this goal include but are not limited to:

(A) Developing and holding workshops and seminars about state anti-poverty program policies and requirements.

(B) Providing on-site assistance to achieve maximum coordination and the fullest benefit of both Federal and state anti-poverty programs.

(C) Developing guidance materials for dissemination to CSA grantees and other appropriate anti-poverty groups or state agencies.

(b) *Supplementary goals and activities.* In those instances where a selected State agency has funds available under Section 231 above and beyond those required to carry out its mandated work program as described in (a) above, the agency may address one or more of the following in its proposed work program:

(1) *Goal:* To assure that Community Action Agencies and other CSA grantees have available to them the technical expertise and information and other assistance which will enable them to carry out effectively and efficiently their anti-poverty efforts.

(i) Acceptable activities in achieving this goal include:

(A) In consultation with CSA, assisting grantees in implementing corrective actions recommended by CSA as a result of evaluations, pre-reviews, monitoring and/or audit reports.

(B) In consultation with CSA, CSA grantees, and other antipoverty groups, sponsoring or participating in training programs and workshops for staff and board members utilizing state resources and personnel to the extent possible.

(C) Providing information and assistance to CAAs, other CSA grantees, and other anti-poverty groups, in planning, developing and operating programs including volunteer programs.

(2) *Goal:* To assure that the Director of CSA has current and expert information on the impediments to coordinating antipoverty programs at the

State level and how these impediments may be eliminated.

(i) Acceptable activities in achieving this goal include:

(A) Advising and assisting CSA in identifying problems posed by Federal and State statutory or administrative requirements that impede state-level coordination of CSA-related programs, and in developing methods or recommendations for overcoming these problems.

(B) Advising CSA on procedures and programs which will promote State agency participation in carrying out the aims and objectives of the Economic Opportunity Act.

(C) Developing an Annual Report to the Director of CSA on the status and impact of Federal and State programs and services affecting low-income individuals within the State.

(c) *Measurable goals and activities in the Work Program.* Goals and activities appearing in the applicant's work program must be stated in terms which are clearly measurable and must include the quantity as well as the quality and character of the improvements to be achieved.

#### § 1061.90-6 Application process.

(a) *Funding offices.* The responsibility for application review, grant approval, and monitoring of grants funded under Section 231 lies with the appropriate CSA Regional Office.

(b) *Application requirements.*

(1) Sixty days prior to the submission of an application for funds to CSA, an applicant selected by the Governor must:

(i) submit eligibility documents to CSA as required in § 1061.90-4(b) above; and

(ii) notify the State clearinghouse and the area clearing houses (if appropriate) of its intent to apply for funds. (See § 1067.10 of this Chapter for detailed instructions.)

(2) Ninety days before the expected funding date or, for refundings, ninety days before the end of the grantee's program year, the applicant/grantee must submit to the appropriate CSA Regional Office a formal grant application.

(3) The following documents must be submitted as part of the formal funding request:

(i) SF-424, Federal Assistance (including all comments received from clearinghouses);

(ii) CSA Form 419, Summary of Work Program and Budget; and

(iii) CSA Form 515, Grantee Budget Information (pages 1 and 2) (See OMB Circular A-102.)

(4) If delegating programs, the following additional documents must be submitted as part of the formal funding request:

(i) CSA Form 85, Administering Agency Funding Estimate;

(ii) CSA Form 87, Delegate Agency Basic Information; and

(iii) CAP Form 11, Assurance of Compliance with Civil Rights Act.

**§ 1061.90-7 Post funding requirements.**

Grantees receiving funds under Section 231 must comply with all CSA rules applicable to grants funded under this Section. See § 1000.1 of this Chapter for a listing of all such rules.

**PART 1064—LIMITED PURPOSE AGENCIES; ELIGIBILITY, ORGANIZATION AND FUNCTIONS**

**Subpart 1064.1—Appeal To CSA By An Organization That Would Like To Serve As A Delegate Agency (CSA Instruction 6441-1)**

Sec.

1064.1-1 Applicability.

1064.1-2 Effective date.

1064.1-4 Policy.

1064.1-5 Requirement that CAA notify prospective delegate agency.

1064.1-6 Appeal procedure for rejected applicant.

1064.1-7 Criteria for resolving appeal.

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 44 FR 56555, Oct. 1, 1979, unless otherwise noted.

**Subpart 1064.1—Appeal To CSA By An Organization That Would Like To Serve As A Delegate Agency (CSA Instruction 6441-1)**

**§ 1064.1-1 Applicability.**

This subpart applies to all programs which are financially assisted under

Title II of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

**§ 1064.1-2 Effective date.**

March 14, 1972 (CSA Instruction 6441-1 § 1064.1-3 Legislation.

Section 604(1) of the Economic Opportunity Act of 1964, as amended, provides in part:

"The Director shall prescribe procedures to assure that \* \* \* (1) special notice of and an opportunity for a timely and expeditious appeal to the Director is provided for an agency or organization which would like to serve as a delegate agency under Title II and whose application to the community action agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Director."

**§ 1064.1-4 Policy.**

This subpart implements section 604(1) by providing procedures to ensure a timely and expeditious appeal for organizations which submit initial or renewal applications to a Community Action Agency (CAA) to serve as delegate agencies and by establishing standards for resolving appeals in a manner which preserves for a CAA the primary responsibility for the planning, administration and evaluation of community action programs in the community which it serves.

**§ 1064.1-5 Requirement that CAA notify prospective delegate agency.**

When an organization informs the CAA that it desires to apply for, or renew delegate agency status, the CAA shall promptly inform such organization of the approximate date by which an application must be submitted in order to be considered for the next funding period. Such applications should be submitted no later than 180 days before the end of the CAA's funding period in order to be considered during the CAA's planning cycle for the coming funding period. In addition, the CAA shall promptly inform each agency which submits an application to become or to continue to be a delegate agency of the provisions of this subpart and the date it expects to receive funding guidance. Applications

which are submitted after the planning cycle begins will normally not be considered. (Further instructions and procedures are set forth in CSA Instruction 6710-1).

**§ 1064.1-6 Appeal procedure for rejected applicant.**

(a) If a CAA either rejects, wholly or substantially, such an application or fails to act upon the application by the time it receives funding guidance from CSA, the agency submitting the application may appeal the rejection or failure to act to the CSA official responsible for approving the grant awarding financial assistance to the CAA. Ordinarily, this official will be the CSA Regional Director for the appropriate Region. If the CAA rejects the application in response to an exercise by CSA of authority under the grant, the agency may also appeal the decision through these procedures.

(b) The agency making such an appeal shall submit to the responsible CSA official a copy of all material it submitted to the CAA in its application as well as a statement setting forth how the application would:

(1) Involve activities which can be closely coordinated with community action programs.

(2) Involve significant new combinations of resources or new or innovative approaches to the problems of the poor. Or;

(3) Be structured in a manner which will, within the limits of the activities contemplated, most fully and effectively promote the purposes of the Act.

(c) In addition, if it is seeking to replace an existing delegate agency or to operate a program currently operated by the CAA, the rejected applicant should explain why it believes it could operate the program more effectively than the CAA or existing delegate agency. If it is seeking to operate a new program not currently operated either by the CAA or an existing delegate agency, the applicant should explain why its proposed program would be superior to those currently operated by or through the CAA. The statement submitted by the rejected applicant shall also contain a description of its efforts to combine the proposed ac-

tivities with those of the CAA and the CAA's response to such efforts. The rejected applicant shall send a copy of the statement to the CAA at the same time the statement is submitted to the responsible CSA official.

(d) The CAA may, within 10 days of receiving a copy of the appeal, submit to the responsible CSA official material in reply to the appeal. The CAA shall also send a copy of such material to the applicant making the appeal.

**§ 1064.1-7 Criteria for resolving appeal.**

(a) The responsible CSA official shall, whenever possible, decide the appeal before the CAA submits its formal funding request. To maintain the principle of local initiative in community action programs, the responsible CSA official will sustain the action of the CAA unless he/she finds that:

(1) The CAA did not give fair and adequate consideration to the rejected applicant's application,

(2) Or the decision of the CAA will have a decidedly adverse effect on the quality of the overall community action program in the local community or would preclude achievement of the objectives of a Special Emphasis program as described in Section 222(a) of the Act.

(b) If the responsible CSA official concludes that the CAA did not provide fair and adequate consideration of the application, he/she shall return it to the CAA with the requirement that it reconsider the application and inform the responsible CSA official in writing of the steps taken to reconsider the application and of the decision reached.

(c) If the applicant has received a fair and adequate consideration, the responsible CSA official may nonetheless review the case to ascertain whether criterion in paragraph (a)(2) of this section has been met. In reviewing the case, the CSA official shall bear in mind the amount of funds available to both the CAA and/or the prospective applicant. Options open to the reviewing official include, but are not limited to:

(1) Sustaining the rejection of the applicant;



(2) Direct funding of the rejected applicant in those instances where CSA is so authorized by the Act (ordinarily limited to Special Emphasis program described in Section 222(a) of the Act);

(3) Requiring that the CAA reconsider the rejected application; and

(4) Taking such other steps as may be deemed appropriate under the circumstances, including not providing funds to the CAA to administer the program which the rejected applicant wanted to carry out.

(d) The responsible CSA official shall promptly inform the applicant and the CAA in writing of his/her decision.

## **PART 1067—FUNDING OF CSA GRANTEES**

### **Subpart 1067.4—Standards for Evaluating the Effectiveness of CSA-Administered Programs and Projects**

Sec.

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1067.4-2 Definitions of terms as used in this subpart.

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1067.4-4 Policy.

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1067.17-1 Applicability.

1067.17-2 Purpose.

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1067.17-4 CSA Form 325a, Budget Support Sheet (parts I and II).

1067.17-5 CSA Form 325, budget summary.

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1067.30-1 Applicability.

1067.30-2 Definitions of terms as used in this subpart.

1067.30-3 Purpose.

1067.30-4 Policy.

1067.30-5 Procedure.

### **Subpart 1067.40—Applying for a Grant Under Title II, Sections 221, 222(a), 231, and 232 of the EOA (CSA Instruction 6710-1 CH 11)**

1067.40-1 Applicability.

1067.40-2 Policy.

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1067.40-3 Application process for funds under Title II, Sections 221, 222(a), and 231 of the EOA.

1067.40-4 Amendments.

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### Subpart 1067.41—Program Account Structure (CSA Instruction 6100-1b and 6100-1b CH 1)

1067.41-1 Applicability.

1067.41-2 Policy.

1067.41-3 Description of Program Accounts.

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#### APPENDIX B—DESCRIPTION OF ACTIVITIES WHICH MAY BE CONDUCTED, SINGLY OR IN COMBINATION UNDER EACH PROGRAM ACCOUNT

### Subpart 1067.42—Establishing and Maintaining Program Accounts (CSA Instruction 6806.01)

1067.42-1 Applicability.

1067.42-2 Effective date.

1067.42-3 Establishing and maintaining program accounts.

### Subpart 1067.43—Accounting for Delegated or Contracted Activities (CSA Instruction 6806-04)

1067.43-1 Applicability.

1067.43-2 Effective date.

1067.43-3 Accounting for delegated or contracted activities.

### Subpart 1067.4—Standards for Evaluating the Effectiveness of CSA-Administered Programs and Projects

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 40 FR 28794, July 9, 1975, unless otherwise noted.

#### § 1067.4-1 Applicability.

This subpart applies to all grants made under Titles I, II, III-B, and VII of the Community Services Act as amended if the assistance is administered by the Community Services Administration.

#### § 1067.4-2 Definitions of terms as used in this subpart.

(a) **Program**—The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specified activities.<sup>1</sup> Example: Senior Opportunities and Services Program.

(b) **Project**—The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program.<sup>1</sup> Example: Meals on Wheels (in the local community)

(c) **Standard**—A general statement describing one or more elements of program and project effectiveness. Example: Stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs (for the elderly). (See Appendix E)

(d) **Program and Project Effectiveness**—The extent to which identifiable progress is being made toward (1) the overall purposes of the Community Services Act and (2) the specific purposes of the program authorities under various Titles of the Act.

#### § 1067.4-3 Purpose.

The purpose of this subpart is to outline standards against which the effectiveness of programs and projects funded by the Community Services Administration will be assessed. It is not the purpose of this subpart to establish standards for conducting evaluations. The focus is on the accomplishments which constitute program and project effectiveness.

#### § 1067.4-4 Policy.

(a) **Standards of Program and Project Effectiveness.** (1) The Economic Opportunity Act of 1964 as amended states that "It is \* \* \* the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation \* \* \*."

(2) In furtherance of the goal of working toward the elimination of poverty Congress mandated numerous program authorities, each with its specific purposes, through which various national programs and local projects are funded. The purposes of each of these authorities are in fact the standards of effectiveness against which programs and projects will be assessed. Through the use of these standards CSA aims to provide a consistent

<sup>1</sup>Adapted from Wholey, Joseph, et. al., *Federal Evaluation Policy*, Washington, D.C.: The Urban Institute, 1971. P. 24

framework within which grantees will proceed to establish priorities, goals and project designs to meet local needs.

(3) The Appendices of this subpart outline the standards of effectiveness derived from the authorizing legislation for the program authorities under Titles I, II, III-B, and VII of the Community Services Act. *Exception:* There are several cases where additional standards are included which are derived from project management experience.

(b) *Applicability of Standards of Effectiveness.* Beginning with FY 1976 fundings, projects operated by grantees must be developed consistent with the requirements stated under each of the following Titles:

(1) *Titles I and III-B:* Projects funded under the above Titles must be consistent with one or more of the standards for the particular program or project. (See Appendices B and N.)

(2) *Title II:* This Title includes both general and specific standards. General standards are standards that are applicable to all program authorities under Title II, e.g. maximum feasible participation. Specific standards are those that are stated for the various program authorities under Title II, e.g. Senior Opportunities and Services.

(i) As a result, Title II programs and projects must address general standards of effectiveness PLUS specific standards.

(ii) Therefore, each project developed by grantees and funded under Title II must be developed consistent with the following:

(a) One or more of the general standards applicable to all Title II programs (See Appendix A), and

(b) One or more of the specific standards developed for the particular program (Appendices B through M).

(iii) It should be noted that although each project must address at least one of the general standards, grantees must assure that their work program as a whole addresses all of the general standards.

**EXAMPLES:** *Emergency Food and Medical Services, section 222(a)(5):* General standards: One or more standards in Appendix A; Specific standards: One or more standards in Appendix D.

*State Agency Assistance, (SEOOs), section 231:* General standards: One or more standards in Appendix A; Specific standards: One or more standards in Appendix M.

(3) *Title VII:* Projects funded under Title VII must be consistent with the four legislative standards stated in Appendix O. Title VII grantees will note that there is considerable overlap among the four standards. Accordingly, any project goal which addresses one of these standards will simultaneously address portions of the others as well.

#### § 1067.4-5 Setting goals consistent with standards.

(a) Measures are needed in order to determine whether programs and projects are effective. These measures will be the project goals developed locally by the grantee. Each grantee is already required to establish planning goals as part of its regular grant application process. The additional requirement established by this subpart is that such goals must be consistent with and directly related to the legislative standards of program and project effectiveness.

(b) As Title II also contains general standards in addition to the specific standards of effectiveness, project goals for Title II programs must be developed in such a manner as to insure that the activities undertaken in pursuing these goals will address the general Title II standards as well as the specific standards for that program.

(c) Project goals must be specific as to both the character and the extent of progress which should be accomplished during the funding period. Goals should be stated in terms which are clearly measurable and should define the quantity as well as the quality and character of the improvements to be achieved. In addition, they must be logically related to the legislative standards which they are designed to meet.

(d) The various appendices of this Instruction provide examples of project goals which address the legislative standards for each program. These examples are provided only as a guide to grantees who must develop their own



goals based on local needs and conditions.

§ 1067.4-6 Procedures.

(a) Grantees should establish their local goals consistent with the standards of project effectiveness as part of their regular grant application process. For all projects funded under Titles II (except section 232) and III-B, the general (for Title II) and specific standards to be addressed and the project goals established consistent with those standards should be listed in the first column of the OEO Form 419. For projects funded under section 232 this should be included in the Narrative Projects Description of the grant application. The activities described for each project goal should clearly indicate how the general as well as the specific standards of effectiveness will be addressed.

(b) For all projects funded under Titles I and VII the specific standards to be addressed and the project goals established consistent with these standards should be stated in the Narrative Project Description of the grant application.

(c) In reviewing and approving grantee applications for funding, CSA will be concerned not only with whether the grantee's goals are realistic and consistent with the grantee's overall strategy, but also with whether such

goals are consistent with the specific legislative purposes embodied in the standards of effectiveness.

(d) CSA will indicate its approval of the standards to be addressed and of the project goals developed by the grantee (as modified in the grant review process) by listing them as a special condition attached to the grant prior to funding. Once the grantee has acknowledged acceptance of these goals as stated in the special condition by signing and returning the grant, the grantee's performance over the course of the funding period will be assessed against the approved work program.

§ 1067.4-7 Reporting requirements.

It is not the intent of CSA to impose additional reporting burdens on grantees. Therefore, separate reports on progress in achieving standards of project effectiveness will not be required. Rather, grantees shall assess their progress in meeting project standards in their regular periodic reports, as required by CSA regulations: (1) For grantees under Titles II (except section 232) and III-B, in their Program Progress Review report, OEO Form 440 (see OEO Instruction 7031-1); and (2) for grantees under Title I, Section 232 of Title II, and Title VII, in their quarterly monitoring reports.

APPENDIX A—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II: LOCAL INITIATIVE AND GENERAL STANDARDS

| Reference                  | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Examples                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 201(a)..... | <p>I. Strengthened community capabilities for planning and coordinating so as to insure that available assistance related to the elimination of poverty can be more responsive to local needs and conditions.</p> <p>II. Better organization of services related to the needs of the poor.</p> <p>III. Maximum feasible participation of the poor in the development and implementation of all programs and projects designed to serve the poor.</p> <p>IV. Broadened resource base of programs directed to the elimination of poverty so as include all elements of the community able to influence the quality and quantity of services to the poor.</p> | <p>A staff person will be detailed to county planning department to assist in planning and evaluation of general revenue sharing.</p> <p>10 man-days of technical assistance will be provided to local governments in applying for CDC and CETA grants.</p> <p>2 representatives from target area will be placed on governing board of United Fund.</p> <p>Obtain State grant for lead-paint testing program.</p> |

## APPENDIX A—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II: LOCAL INITIATIVE AND GENERAL STANDARDS—Continued

| Reference                      | Standards of effectiveness                                                                                                                                                          | Examples                                                                                             |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Title II, sec. 201(a)(3) ..... | V. Greater use of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing available resources. | 30 prefabricated houses will be produced annually through purchase and operation of housing factory. |
| Title II, sec. 223 .....       | VI. Maximum employment opportunity, including opportunity for further occupational training and career development, for residents of the area and members of the groups served.     | 20 job slots will be developed for para-profession in local health agencies and institutions.        |

## APPENDIX B—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE I AND TITLE II, SEC. 232: RESEARCH AND DEMONSTRATION

| Reference                      | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Examples of project goals                                                                                                                                  |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title I, sec. 102 .....        | I. Development of new approaches and/or methods that will aid in overcoming special problems of poverty or otherwise further the purposes of titles I and II through.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (NOTE.—R. & D. at a minimum, should contain testable hypotheses in conjunction with a fully developed research design associated with project activities.) |
| Title II, sec. 232 .....       | A. Support of projects designed to provide conclusive information concerning the usefulness of a program or technique thought to have the potential of major impact on an identified special problem. The generation of persuasive knowledge is the central goal of such efforts; the major criterion of success is the utility of the knowledge produced in designing projects which meet carefully defined needs of the poor.<br>B. Support of individual or series of projects which test specific program strategies or techniques to deal with special problems of poverty. Such demonstrations are designed to: (1) Provide an experience base sufficient to determine the applicability of the strategy or technique; and (2) provide exposure for strategies and techniques to increase their acceptance and application by funding sources and policymakers.<br>C. Support of projects which: (1) Directly intervene to change established institutions or, (2) establish alternative institutions or mechanisms to serve poor people. |                                                                                                                                                            |
| Project management experience. | II. Collection and maintenance of appropriate data which is adequate to produce dissemination and utilization of project results.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                            |

## APPENDIX C—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SECS. 222(a)(11) AND 214: HOUSING DEVELOPMENT AND REHABILITATION

| Reference                          | Standards of effectiveness                                                                                                                                                 | Examples of project goals                       |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Title II, sec. 222(a)(11) and 214. | I. Provision of assistance and appropriate housing services and social services in low-income families in order to help them acquire adequate, safe, and sanitary housing. | Assist 50 families in obtaining FmHA mortgages. |

**APPENDIX D—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 222(a)(5): EMERGENCY FOOD AND MEDICAL SERVICES**

| Reference                     | Standards of effectiveness                                                                                                  | Examples of project goals                                                                                                        |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 222(a)(5)..... | I. Improvement in the nutritional status of the target population.<br>II. Reduction in hunger among the target population.. | Develop reduced priced meals for the elderly in 2 local hospital cafeterias.<br>Certify 100 additional families for food stamps. |

**APPENDIX E—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 222(a)(7): SOS**

| Reference                      | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Examples of project goals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 222(a)(7) ..... | Identification and meeting of needs of older, poor persons above the age of 60 to assure them greater self-sufficiency.<br>I. Development and provision of employment services to older poor persons.<br>II. Development and provision of volunteer services to older poor persons.<br>III. Effective referral of older poor persons to existing health, transportation, education, housing, legal, consumer, transportation, education, and recreational and other services.<br>IV. Stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs.<br>V. Modification of existing procedures, eligibility requirement and program structures to facilitate the greater use of, and participation in, public services by older persons.<br>VI. Development of all-season recreation and service centers controlled by older persons. | Locate 20 part-time jobs for elderly poor persons.<br>Recruit and train 25 teenagers to do odd jobs for disabled elderly.<br>Provide effective referral and followup to 200 elderly persons annually.<br><br>Mobilize business and industry to provide \$5,000 for elderly drop in centers.<br><br>Age limits will be raised for training programs offered by local community colleges to enable participation by the elderly.<br>Organize and train council of elders to operate 5 existing drop in centers. |

**APPENDIX F—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 222(a)(10): ENVIRONMENTAL ACTION**

| Reference                     | Standards of effectiveness                                                                                                                                                                                                                                                                                       | Examples of project goals                                                                                                             |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 2(a)(10) ..... | I. Development of opportunities for low-income persons for work (which would not otherwise be performed) on projects designed to combat pollution.<br>II. Development of opportunities for low-income persons for work (which would not otherwise be performed) on projects designed to improve the environment. | Obtain 25 job slots for low-income persons in the development of abandoned canal system as a recreation facility.<br><br>(See above). |



## APPENDIX G—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 222(a)(12): ENERGY

| Reference                      | Standards of effectiveness                                                                                                                                                                     | Examples of project goals                                                                                                                                                     |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 222(a)(12)..... | I. Participation of low-income individuals and families, including the elderly and the near poor, in energy conservation programs designed to reduce individual and family energy consumption. | Effectively winterize homes owned by poor people to reduce the use of fuel by 15-25 percent, and bring heating/cooling cost within family budget.                             |
| Project management experience. | II. Development of community based programs to deal with energy-related programs.                                                                                                              | Organize and operate a crisis center directed and managed by community-based board.                                                                                           |
| Do.....                        | III. Consistency with State, local, and national use goals so as to meet local needs of cost, supply, and demand, e.g., conversion, use of alternate sources of energy.                        | On the basis of prevalent type of energy sources, cost, and supply convert 5 percent of dwellings occupied by the poor to cheaper/more efficient/more abundant energy source. |
| Title II, sec. 222(a)(12)..... | IV. Participation of low-income individuals and families in programs designed to lessen the impact on them of the high cost of energy.                                                         | Establish revolving emergency loan fund to give direct financial assistance to 100 neediest families for fuel payments and to prevent utility shutoffs.                       |

## APPENDIX H—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 222(a)(13): SUMMER YOUTH RECREATION

| Reference                      | Standards of effectiveness                                                      | Examples of project goals                       |
|--------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------|
| Title II, sec. 222(a)(13)..... | I. Recreational opportunities for low-income children during the summer months. | Provide 150 camperships for low-income children |

## APPENDIX I—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 226: DESIGN AND PLANNING ASSISTANCE

| Reference                | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Examples of project goals                                                                         |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Title II, sec. 226 ..... | <p>I. Delivery of technical assistance relating to housing, neighborhood facilities, transportation, and other aspects of community planning and development to persons and community organizations or groups not otherwise able to afford such assistance.</p> <p>II. Delivery of professional architectural and related services relating to housing, neighborhood facilities, transportation, and other aspects of community planning and development to persons and community organizations or groups not otherwise able to afford such assistance.</p> <p>III. Maximum use of the voluntary services of professional and community personnel.</p> | (To be developed if and when funds are made available for projects under this program authority.) |

**APPENDIX J—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 227: YOUTH RECREATION AND SPORTS PROGRAM**

| Reference                | Standards of effectiveness                                                                                                                                                                | Examples of project goals                                                                       |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Title II, sec. 227 ..... | I. Recreation, physical fitness instruction, athletic competition (with high-quality facilities and supervision) and related educational and counseling services for disadvantaged youth. | Obtain permission to use 3 previously-closed public school gymnasiums during the summer months. |

**APPENDIX K—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 228: CONSUMER ACTION AND COOPERATIVE PROGRAMS**

| Reference                  | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Examples of project goals                                                                                                                                                                                                                                                 |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 228(a)..... | I. Improvement in the quality, delivery, and pricing of goods and services used by low-income persons.<br>II. Availability to assist low-income persons without undue delay or burden of financial credit at reasonable cost.<br>III. Development of means and mechanisms of enforcing consumer rights in a way that meets the needs of low-income persons.<br>IV. Education of low-income persons with respect to (consumer) rights, procedures, grievances, views, and concerns. | Establish 5 consumer education councils.<br><br>Organize 5 local banks to provide a credit pool for low-income persons with credit problems.<br>Obtain \$15,000 in State funds for consumer advocate attorney.<br><br>Ombudsman's role will be played by local newspaper. |

**APPENDIX L—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 230, TECHNICAL ASSISTANCE AND TRAINING**

| Reference                | Standards of effectiveness                                                                                                                                           | Examples of project goals                                                                                                                                                                                  |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 230 ..... | I. Technical assistance to communities in developing, conducting, and administering programs under title II.<br>II. Training for specialized or other personnel..... | Design and conduct 3 orientation sessions for new employees.<br><br>Design and conduct a series of workshops for board members to improve the quality of submission of the program progress review report. |

**APPENDIX M—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 231: SEOO'S**

| Reference                     | Standards of effectiveness                                                                                                  | Examples of project goals                                                                                                                                   |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 231(a)(1)..... | I. Technical assistance to communities and State and local agencies in developing and carrying out programs under title II. | During the State legislative session, provide title II grantees with weekly status report through a newsletter of pending State social welfare legislation. |

**APPENDIX M—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE II, SEC. 231: SEOO's—Continued**

| Reference                      | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                      | Examples of project goals                                                                                                                                                            |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title II, sec. 231(a)(2) ..... | II. Assistance in coordinating State activities related to title II.                                                                                                                                                                                                                                                                                                            | Develop training systems and conduct seminars for State agency personnel regarding antipoverty programs authorized under the Economic Opportunity Act of 1964 as amended.            |
| Title II, sec. 231(a)(3) ..... | III. Provision of advice and assistance to the director in developing procedures and programs to promote the participation of States and State agencies in programs under title II.                                                                                                                                                                                             | Prepare project performance data for Governor's office for all programs operating under the EOA as amended.                                                                          |
| Title II, sec. 231(a)(4) ..... | IV. Provision of advice and assistance to the director, the economic opportunity council and the heads of other Federal agencies, in identifying problems posed by Federal statutory or administrative requirements that operate to impede State level coordination or programs related to title II and in developing methods or recommendations for overcoming those problems. | Develop and recommend a reporting system for use by CAA's in collecting necessary information regarding statutory and administrative impediments vis a vis all grantmaking agencies. |
| Project management experience. | V. Advocacy for the poor in State government .....                                                                                                                                                                                                                                                                                                                              | Establish membership for poor persons on 5 advisory committees to State antipoverty agencies.                                                                                        |
| Do .....                       | VI. Mobilization of antipoverty resources, particularly at the State level.                                                                                                                                                                                                                                                                                                     | Assist two CAA's in obtaining grants from State manpower agency.                                                                                                                     |

**APPENDIX N—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE III-B, SEC. 311, 312: MIGRANT, AND SEASONALLY EMPLOYED, FARMWORKERS AND THEIR FAMILIES**

| Reference                   | Standards of effectiveness                                                                                                                                                                                                                                                                                   | Examples of project goals                                                                         |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Title III-B, sec. 311 ..... | I. Assistance to migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life.                                                                                                                              | (To be developed if and when funds are made available for projects under this program authority.) |
| Sec. 312(b) .....           | II. Alleviation of the immediate needs of migrant and seasonal farmworkers and their families.                                                                                                                                                                                                               |                                                                                                   |
| Do .....                    | III. Increased community acceptance of migrant and seasonal farmworkers and their families.                                                                                                                                                                                                                  |                                                                                                   |
|                             | IV. Assistance to unskilled migrant and seasonal farmworkers and members of their families in meeting the changing demands in agricultural employment brought about by technological advancement.                                                                                                            |                                                                                                   |
|                             | V. Assistance to unskilled migrant and seasonal farmworkers and members of their families to take advantage of opportunities available to improve their well-being and self-sufficiency by gaining regular permanent employment or by participating in available Government employment or training programs. |                                                                                                   |



**APPENDIX O—STANDARDS OF PROGRAM AND PROJECT EFFECTIVENESS FOR ALL PROGRAMS AND PROJECTS FUNDED UNDER TITLE VII, SEC. 712**

| Reference                | Standards of effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                          | Examples of project goals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title VII, sec. 701..... | I. Improvement in the quality of participation by low-income residents in community life so as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.                                                                                                                                                                                                                                                         | 1. Startup or acquisition of 2 manufacturing ventures, providing 50 jobs to low-income residents who are currently unemployed, receiving public assistance, or working at marginal wage levels.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Title VII, sec. 711..... | II. Solution to critical problems in urban and rural communities and neighborhoods with high concentrations and numbers of low-income persons.<br>III. Producing an appreciable and continuing impact in arresting tendencies toward dependency, chronic unemployment, and community deterioration in such areas.<br>IV. Starting, expanding, and locating enterprises in such areas to provide employment and ownership opportunities for residents of such areas. | 2. Construction of 20 units of subsidized housing for low-income elderly residents.<br>3. Acquisition, development, and construction of industrial park which will provide facilities for manufacturing and commercial enterprises which will employ 100-150 residents and increase the area's tax base by \$1.5 million.<br>4. Through joint venturing, loan guarantees, and bank deposits, attract \$750,000 in private investment/loan capital to enterprises in the target area.<br>5. Train 5 target area residents for middle-management positions in CDC ventures.<br>6. Train 20 community residents serving on CDC and subsidiary boards in corporate legal responsibilities and analysis of financial reports.<br>7. Provide technical assistance in the packaging of 10 small business loans for enterprises owned by or employing low-income residents. |

**Subpart 1067.5—General Conditions Governing Certain CSA Grants Funded (CSA Instruction 7050-1)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 40 FR 27031, June 26, 1975; 40 FR 44327, Sept. 26, 1975, unless otherwise noted.

**§ 1067.5-1 Applicability.**

This subpart applies to all grants funded under Titles II, III-B and VII of the Economic Opportunity Act of 1964 as amended if the assistance is administered by the Community Services Administration.

**§ 1067.5-2 Purpose.**

(a) The purpose of this subpart is twofold: (1) To promulgate and forward revised General Conditions applicable to CSA grantees (see § 1067.4-1) which reflect the enactment of the Community Services Act of 1974 and the establishment of the Community Services Administration as the successor authority to OEO by changing all references to the Economic Opportunity Act as amended to read Commu-

nity Services Act of 1974; changing all references to "OEO" in the General Conditions to read "CSA"; and adding item 15 which addresses the legal implications of the successor authority on current and future regulations, grant-making documents, special conditions, etc.; and

(2) To publish for the first time as part of the issuance system an Addendum to the General Conditions for Grants Made Under section 712 of the Community Services Act of 1974. (Although not in the issuance system prior to this publication they have been attached to grants since January 1974.)

(b) The General Conditions for Titles II, III-B, and VII remain substantively unchanged from those issued in January 1972. The Addendum to the General Conditions has been changed to reflect the legislation vis-a-vis assets acquired with grant funds (see item 13).

**§ 1067.5-3 Policy.**

(a) The attached general conditions and the addendum to general conditions for section 712 grants are in

effect for all current grant actions to which they apply as of July 28, 1975. These general conditions also will be attached to all future grants actions. However, grantees should note that even if general conditions are not attached, the program accounts in the grant action remain subject to the applicable general conditions in this subpart.

(b) In accepting the grant, the authorized official of the grantee accepts on behalf of the grantee the limitations of the applicable general conditions.

## APPENDIX A

### GENERAL CONDITIONS GOVERNING GRANTS UNDER TITLES II, III-B AND VII OF THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED (INCLUDING AMENDMENTS MADE BY THE COMMUNITY SERVICES ACT OF 1974)

Program funds expended under authority of this funding action are subject to the provisions of the Community Services Act of 1974, the general conditions listed below, any attached special grant conditions, and Community Services Administration (CSA) directives. The grantee is expected to inform CSA promptly if it fails to receive, or has reason to believe it has failed to receive, all CSA applicable directives or any attachments to the Statement of OEO Grant. Many of those provisions do not represent invariable policies of the CSA and exceptions should be requested in cases in which compliance with one or more of them would cause unnecessary difficulties in carrying out the approved program. Requirements found in grant conditions or CSA directives may be waived only by a written notification signed by an authorized CSA official. Any such waiver must be explicit: no waiver may be inferred from the fact that the funding action is responsive to a grant funding request which may have contained material inconsistent with one or more of these conditions.

#### 1. Definitions. As used in these conditions:

(a) An "approved program" consists only of those activities described in the grant funding request for which funding is approved in the Statement of OEO Grant and its attachments (which may include modifications of proposed activities) or in CSA approved written amendments to the Statement of OEO Grant.

(b) "Program account funding period" extends from the effective date of a new or re-funding action through the termination date or expiration of planned number of months for which funding is provided.

(c) "Total program funds" refers to all amounts approved for expenditure for the approved program as shown on the Statement of OEO Grant, whether such amounts are derived from Federal or non-Federal sources, or whether they are provided in cash or in kind.

(d) "CSA directives" are statements of policy and procedure published in the CSA publications system.

2. *Applicability of conditions to delegate agencies.* These conditions are applicable both to the grantee and to any delegate agency or organization that, pursuant to an agreement with the grantee, undertakes responsibility for any part of the approved program. Such an agreement may be entered into only if (1) the intention to make such a delegation to the particular agency has been set forth in the funding request for this grant action or has otherwise been approved by CSA, and (2) the contract contains all of the provisions found in the approved "Standard Contract Form for Delegation of Program Accounts."

3. *Limitations on expenditure of program funds.* Expenses charged against program funds may not be incurred prior to the effective date of the grant or subsequent to the termination date unless written prior approval has been received from the CSA funding official and may be incurred only as necessary to carry out the purposes and activities of the approved program. Such expenditures may not exceed the maximum limits shown on the Statement of OEO Grant or those subsequently approved for that approved program, subject to allowable flexibility guidelines published by CSA. All expenses incurred for the approved program must be supported by approved contracts, purchase orders, requisitions, bills, or other evidence of liability consistent with the grantee or delegate agency's established purchasing procedures. Expenses charged against program funds must also be incurred in accordance with CSA directives. Liabilities of the grantee or its delegate agencies to third parties as a result of termination action which are costs of phasing out in accordance with CSA directives or are specifically approved shall be considered proper expenditures of program funds. CSA will determine the disposition of unexpended funds at the termination of the grant.

4. *Limitations on expenditures of federal funds.* Expenditures of funds derived from Federal grant funds must not exceed in any event the amount of the Federal grant shown in the Statement of OEO Grant, (Column 9, OEO Form 314). Moreover, if a minimum non-Federal percentage of program funds is shown in the Statement of OEO Grant (Column 10, OEO Form 314), the portion of the total expenditures of the approved program derived from non-Federal

sources, valued in accordance with CSA Instructions, must not be less than that minimum percentage of the total program funds for the approved program. This requirement must be met for each program account funding period, and should be substantially true for each financial reporting period. Deficiencies of non-Federal share in one program account may be supplied by an excess in other program accounts consistent with applicable CSA Instructions concerning the pooling of non-Federal share. Further, the amount of total program funds derived from Federal grant funds must not exceed the grantee's allowable costs for the approved program which have been or are to be paid in cash.

5. *Property.* No program funds may be expended or costs incurred for the purchase of real property except as in accordance with regulations on the acquisition, ownership, and disposition of personal property as set forth in CSA directives.

6. *Discrimination prohibited.* No person in the United States shall on the ground of race, color, religion, sex, age, or national origin, be excluded from participation in, be denied the proceeds of, or be subject to discrimination under the program approved as a result of this funding request. The grantee and its delegate agencies will comply with the regulations promulgated by the Director of CSA, pursuant to the Civil Rights Act of 1964, and pursuant to the Community Services Act of 1974.

7. *Discrimination in employment prohibited.* In all hiring or employment made possible by or resulting from this grant action, each employer (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin, and (2) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates or pay of other forms of compensation; and selection for training, including apprenticeship. The grantee and its delegate agencies shall comply with all applicable Statutes and Executive Orders on equal employment opportunity and this grant action shall be governed by the provisions of all such Statutes and Executive Orders, including enforcement provisions, as implemented by, but not limited to, CSA directives.

8. *Religious institutions.* The grantee and its delegate agencies shall ensure that any part of the approved program that is conducted by a church or church related institution is entirely non-sectarian in content and purpose, and that CSA directives on

grants and delegations to churches or church related institutions are satisfied.

9. *Labor standards.* All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings, and works which are federally assisted under this grant shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a-5).

10. *Patents.* Any discovery or invention arising out of or developed in the course of work aided by the grant shall be promptly and fully reported to the Director of CSA for determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon shall be disposed of and administered, in order to protect the public interest.

11. *Copyrights.* If the grant results in a book or other copyrightable material, the author is free to copyright the work, but CSA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and any material which can be copyrighted resulting from the approved program.

12. *Reports, records, and inspections.* The grantee and its delegate agencies shall submit financial, program progress, evaluation, and other reports as required by CSA directives, and shall maintain such property, personnel, financial and other records and accounts as are deemed necessary by CSA to assure proper accounting for all program funds. The grantee and its delegate agencies and contractors shall permit on-site inspections by CSA representatives, and shall effectively require employees and board members to furnish such information as, in the judgment of the CSA representatives, may be relevant to a question of compliance with grant conditions and CSA directives, or the effectiveness, legality, and achievements of the program. All grant records will be made available to the authorized representatives of CSA or the Comptroller General of the United States, and will be retained for three years after the expiration of this grant unless permission to destroy them is granted by the Director of CSA.

13. *Covenant against contingent fees.* The grantee warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this funding action upon an agreement or understanding for commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the government shall



have the right to annul this funding action without liability or, in its discretion, to deduct from the grant or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as may be legally available.

14. *Suspension and termination.* The Director of CSA may in accordance with published regulations, suspend or terminate this grant in whole or in part for cause, which shall include: (1) Failure or unwillingness of the grantee or its delegate agencies to comply with the approved program including attached conditions, with applicable statutes and Executive Orders, or with such CSA directives as may become generally applicable at anytime; (2) submission by the grantee or its delegate agencies to CSA of reports which are incorrect or incomplete in any material respect; (3) ineffective or improper use of Federal funds by the grantee or its delegate agencies; (4) making any change which significantly impairs the representative character of the grantee's policymaking body or the grantee's capacity to enlist community support; (5) failure of the grantee either to adequately monitor and evaluate program activities delegated to other agencies, or to provide effective guidance to such agencies in carrying out the purpose and activities of the portions of the approved program delegated to them. This grant may also be suspended or terminated in whole or in part in the event the grantee is a Community Action Agency and a new agency is recognized by CSA as the Community Action Agency for all or part of the area served by the grantee in accordance with CSA directives. In such event part of the grant funds and the grantee's or delegate agencies' functions, obligations, records (or copies), authority and property relating to assistance provided to the grantee or its delegate agencies under this funding shall be transferred by the grantee and its delegate agencies to such newly recognized agency. No suspension or termination will effect any expenditures or legally binding commitments made prior to receiving notice of the suspension or termination, provided such expenditures or commitments were made in good faith and not in anticipation of termination and are otherwise allowable. Funds shall not be treated as committed for this purpose solely by virtue of a grantee's contract or other commitment to a delegate agency. Upon suspension or termination, the disposition of unexpended Federal funds and property purchased with program funds will be subject to CSA direction.

15. *Successor authority of Community Services Administration.* By virtue of the Community Services Act of 1974 (P.L. 93-644), the Community Services Administration (CSA) is, in all respects and for all pur-

poses, the successor authority to the Office of Economic Opportunity (OEO).

Pursuant to section 601(d)(2) of the Community Services Act of 1974, all references to the Office of Economic Opportunity, in official documents including but not limited to, grant documents and regulations, shall be deemed to refer to the Community Services Administration, as set forth in OEO Notice 6000-3 "Successor Authority to the Office of Economic Opportunity," dated January 15, 1975 and published in Volume 40 of the FEDERAL REGISTER at page 3213 (January 20, 1975).

All references to "CSA Directives" or "CSA Instructions" in these general conditions, and special conditions attached hereto and the grant-making documents themselves shall be read so as to include all regulations issued by the Office of Economic Opportunity and any subsequent regulations issued by the Community Services Administration. Such regulations, whether referred to as "OEO" or "CSA" regulations, instructions or notice, remain in force and are deemed to be the policy statements of the Community Services Administration until superseded, rescinded, or changed.

All references herein to "Statement of OEO Grant", or a portion thereof, are deemed to refer to the document, regardless of form or title, utilized by the Community Services Administration to make grants under the authority of the Community Services Act of 1974.

All references to the Community Services Act of 1974 shall be read so as to include the Economic Opportunity Act of 1964 as amended.

[40 FR 27031, June 26, 1975; 40 FR 44327, Sept. 26, 1975, as amended at 45 FR 64940, Oct. 1, 1980]

## APPENDIX B

### ADDENDUM TO GENERAL CONDITIONS FOR GRANTS MADE UNDER SECTION 712 OF THE ECONOMIC OPPORTUNITY ACT, AS AMENDED (INCLUDING AMENDMENTS MADE BY THE COMMUNITY SERVICES ACT OF 1974)

These conditions are binding both on the grantee and on any delegate agency under this grant. As used in these conditions, the term delegate agency refers to any agency with which the grantee or the delegate agency enters into an agreement for performance of any portion of the grant program. Venture subsidiaries or agencies receiving only venture capital funds (cost category 2.5) are not considered delegate agencies. This grant action specifically recognizes the following delegate agencies:

1. *Applicability of CSA directives.* Any CSA directives applicable to grants made under Section 712 of the Community Services Act of 1974<sup>1</sup> (formerly section 151 of the Economic Opportunity Act) shall be binding on this grantee and any delegate agency until such time as they are specifically revised or superseded by directives applicable to grants made under section 712 of the Community Services Act.

2. *Submission of reports.* Any subsidiary and any individual or organization which receives grant funds or other financial assistance from the grantee or delegate agency shall submit financial, program, progress, evaluation, and other reports as required by CSA and the Office of Economic Development (OED) and shall maintain such property, personnel, financial, and other records deemed necessary by CSA to assure a proper accounting for all grant funds. Decisions made by the grantee or delegate agencies to invest in or to extend financial assistance to any project shall include an agreement between the grantee or delegate agencies and the other parties which effectively requires that the grantee, the appropriate delegate agency, CSA or its successor, CSA contractors performing evaluations of the grant program, and the U.S. General Accounting Office, shall have access to records and information either in writing or through on site inspection as deemed necessary, in the judgment of CSA, for monitoring the effectiveness and legality of the financial assistance.

3. *Review of chief executive officer.* Prior to hiring the Chief Executive Officer the grantee and/or delegate agency shall submit the name and resume of the candidate to OED. The selection of a proposed candidate will be subject to review and comment by OED prior to appointment. OED will have 30 days in which to review and comment on the proposed candidate. However, while seeking a permanent Chief Executive Officer, the grantee may hire, without OED's review, a qualified person on an interim basis for a period not to exceed four months.

4. *Limitation on contracts.* No contract or series of contracts for the performance of any specific task or general service which shall result in an expenditure totaling more than \$5,000 in grant funds to any individual or firm in any fiscal year shall be entered into without the prior written approval of OED. Accordingly, the grantee shall submit the following information to OED:

a. A review of the purpose of the proposed contract (or contracts);

b. The time and manner specified for its performance;

c. The breakdown, in the form of a budget, of its costs;

d. A statement of the qualifications and experience of the principal consultants and contractors who will be responsible for its performance;

e. The manner of selection of the consultant(s) or contractor(s) (e.g., sole source, competitive bid, etc.).

5. *Employment contracts.* Any employment contract regardless of cost to which the grantee or a delegate agency is to be a party and which involves the expenditure of grant funds, shall be submitted to OED for review prior to execution. The employment contract shall constitute the entire agreement between the parties; any subsequent amended agreement is also subject to OED review.

6. *Use of grant funds for meals.* No grant funds shall be expended for the cost of meals for employees or officers of the grantee or delegate agency, except when on travel status.

7. *CSA approval of corporate documents.* No funds shall be expended by the grantee, delegate agency, or subsidiaries until the articles of incorporation and by-laws of such entities have been submitted to OED and approved in writing. After initial approval and so long as there is a grant relationship between CSA and the grantee such articles and by-laws shall not be amended without OED's written concurrence.

8. *Use of venture capital funds.* a. No venture capital funds shall be shifted to other cost categories without prior written approval of OED.

b. Funds for venture capital shall be used to provide financial and other assistance, either directly or indirectly, for the creation, acquisition, preservation and expansion of business ventures, subject to the following terms and conditions:

(1) Except as otherwise provided for by the terms of the grant no venture capital funds shall be used without the prior approval of OED.

(2) For each venture, to obtain the approval specified in paragraph (1), the grantee shall submit to OED a full description of the proposed use of financial or other assistance, including an explanation of how it will further grant purposes. Each description shall include:

(a) Appropriate feasibility studies and cost analyses;

(b) Certified balance sheets and profit and loss statements for the immediately preceding three years or from the commencement of its operation, whichever period is shorter, if funds will be used for the acquisition, preservation or expansion of an existing business venture;

<sup>1</sup>All references to the Community Services Act of 1974 shall be read so as to include the Economic Opportunity Act of 1964, as amended.

(c) Cash-flow projections and pro forma profit and loss statements and balance sheets estimated on a monthly basis for two years;

(d) The estimated purchase price or annual rent for any proposed purchase or lease of real property, accompanied by an independent appraisal of the property establishing that the proposed purchase price or annual rent is reasonable. (For additional information required in the event real property is to be purchased, see Addendum General Conditions 13, 15, and 16).

(e) Resumes of management team

(f) Articles of Incorporation and By-Laws

c. No grant funds shall be expended on any loan or capital investment project or program without evidence that such funds are not available from other private or public sources on terms that are reasonable and consistent with the goals of this grant. Such evidence shall be kept on file during the grant relationship and for at least three years thereafter.

d. Decisions made by the grantee or delegate agencies to invest in or to extend financial assistance to any project shall include an agreement between the grantee or delegate agencies and the other parties which assures that the maximum feasible benefits shall accrue collectively to the poor residents of the target area.

9. *Issuance of public securities.* There shall be no public issuances of securities by a grantee, a delegate agency, or any project utilizing venture capital funds without the prior approval of OED or its successor. Copies of any registration statement or notification or prospectus or offering circular prepared in conjunction with a public issuance should be sent to OED. Copies of any other documents which the issuer is required to file in connection with any public issuance of securities, whether by Federal securities laws or by state blue sky laws, should also be sent to OED.

10. *Accounting procedures and audit requirement for ventures.* a. In order to ensure that the organization operating the venture has established or maintains a satisfactory accounting system, the grantee shall engage an independent certified public accountant to perform a survey to evaluate and review the adequacy of the accounting system, and shall submit to OED a complete copy of the survey report. This report shall be submitted prior to the expenditure of investment capital and the grantee shall keep a copy on file during the grant relationship and for at least three years thereafter.

b. In each case in which the assurances described in paragraph a, above, are required, the grantee shall also ensure that within three (3) months of receipt of assistance by the venture a preliminary audit survey is made to evaluate and review the adequacy of such accounting system. A copy

of such audit survey report shall be promptly submitted to CSA, and the grantee shall keep a copy on file during the grant relationship and for at least three (3) years thereafter.

c. The grantee shall also ensure that within one (1) year of the receipt of assistance, and annually thereafter, an audit will be conducted for any venture which was assisted with grant funds. Where the grantee, directly or indirectly, exercises control over such ventures, it shall be responsible for taking the necessary steps to correct any deficiencies disclosed by such audit (including such action as CSA, based on its review of the audit reports, may direct). A copy of such audit report shall be promptly submitted to CSA and the grantee shall keep a copy on file during the grant relationship and for at least three (3) years thereafter.

d. Additional audit requirements applicable to this grant are contained in OEO Instruction 6801-1.

11. *Manpower training programs.* Though training and counseling may be necessary for target area residents employed in ventures assisted with venture capital funds, every reasonable effort should be made to insure that standards of employee performance conform to generally accepted industry practice. Accordingly, no manpower training activity should be assisted with grant funds unless such activity not only complements, but also provides necessary support for grant assisted ventures. (See section 712(a)(3) of the Community Services Act of 1974.)

12. *Assets acquired with grant funds.* a. Grantees (or delegate agencies) shall have a defeasible property right in all assets acquired with venture capital funds. In connection with its approval of a plan for the expenditure of venture capital funds by the grantee (or delegate agency), CSA will require rights or interests in such assets be reserved to CSA as necessary to ensure that these assets are used in a manner consistent with the Community Services Act of 1974. Notwithstanding this reservation, CSA, in order to encourage participation by firms, individuals, private lending institutions and other governmental agencies in ventures financed in whole or in part with grant funds, may execute those documents necessary to demonstrate that any liens, claims, rights or security interests it may have in assets acquired with grant funds, are subordinate to any liens, claims, rights or security interests of any firm, individual, private lending institution or governmental agency participating in such ventures. This subordination of rights and interests by CSA is dependent upon CSA's determination that grant purposes will be furthered through this action.

b. The grantee or delegate agency may not sell, mortgage, or otherwise encumber stock



or any other assets acquired with grant funds without the prior written approval of OED. Funds obtained by the sale, mortgage or other encumbrance of such assets shall be used to carry out projects consistent with the purposes of the grant pursuant to Title VII-A of the Community Services Act of 1974; provided that during the grant relationship no such amounts shall be used without the prior written approval of OED.

c. Nothing in this condition shall be construed as being contradictory to Section 714 of the Community Services Act which says "Capital Investments made with funds granted as a result of the Federal share of the costs of programs carried out under this title, and the proceeds from such capital investments, shall not be considered Federal property. Upon investment, title rights vest in the Community Development Corporation." This condition serves only to enable the Federal Government to meet its responsibility under Section 714 to "direct that on severance of the grant relationship the assets purchased continue to be used for the original purpose for which they were granted".

13. *Accounting for income.* The grantee, its subsidiaries, or any delegate agencies performing activities under this grant shall set up separate books for each capital investment project, including loan or loan guarantee programs. The books shall be maintained so that all income accruing to the grantee, its subsidiaries, or any delegate agencies is clearly identified. Income includes:

a. Interest earned on unexpended grant funds which have been disbursed for a program purpose (e.g., the interest earned on grant funds which have been deposited in a minority bank, or interest earned on grant funds placed in a revolving loan fund account). (If grant funds have not yet been disbursed for a program purpose, then any interest must be returned to the Treasury);

b. Capital gains;

c. Profits; and

d. And interest or deferred income (including unrealized appreciation and retained earnings of it and its subsidiaries) derived from the capital investment projects and loan repayments.

All such income and loan repayments shall be the property of the grantee or delegate agency and may be used in a manner consistent with the intent of Title VII-A of the Community Services Act of 1974 and this grant.

14. *Disposition of assets.* a. It may be determined prior to or during the term of this grant action that there will be no subsequent refunding action. If this grant is the final grant, at least 90 days prior to the end of the formal grantee/grantor relationship, the grantee shall submit for CSA written approval a plan for the disposition of the

tangible and intangible assets acquired with grant funds and owned or controlled by the grantee, its delegate agency or its subsidiaries, successors and assignees. This plan shall describe procedures whereby these assets shall be dedicated to use consistent with the grant and Title VII-A, and controlled by the grantee or a similar organization accountable to the target area population.

b. If no plan for disposition is submitted or if the plan as submitted is disapproved, in whole or in part, then the grantee shall transfer or assign these assets to such entity(s) as CSA shall direct in order to ensure their continued use in a manner which is consistent with the intent of this grant and of Title VII-A of the Community Services Act of 1974.

15. *Grant termination for cause.* If this grant is terminated for cause pursuant to CSA regulations, all unexpended grant funds shall be returned to CSA. In addition, in the event of such termination all tangible and intangible assets owned by the grantee or by any delegate agencies, which were derived from or acquired by the use of grant funds, shall be transferred or assigned to such entity as CSA shall direct in order to continue an economic development program pursuant to the purposes of this grant and Title VII-A of the Community Services Act of 1974.

[40 FR 27031, June 26, 1975; 40 FR 44327, Sept. 26, 1975, as amended at 45 FR 64939, Oct. 1, 1980]

## APPENDIX C

ADDENDUM TO THE GENERAL CONDITIONS FOR GRANTS MADE UNDER TITLE II OF THE ECONOMIC OPPORTUNITY ACT OF 1964, AS AMENDED, IN WHICH GRANT FUNDS WILL BE USED AS VENTURE CAPITAL

1. *Applicability of CSA Directives.* These conditions and all CSA policy statements applicable to grants made under Title II of the Economic Opportunity Act of 1964, as amended, shall be binding on this grantee and on any agency or organization with which the grantee contracts for performance of a component of the grant work program. Where a particular CSA directive would be clearly inappropriate to the successful performance of the venture activity, the grantee may request in writing an exception to compliance from the appropriate CSA administering office.

2. *CSA Approval of Corporate Documents.* No funds shall be expended by the grantee or by a contracting organization until the articles of incorporation and the bylaws of these entities have been submitted to the appropriate CSA administering office and have been approved in writing. After initial

approval and so long as there is a grant relationship between CSA and the grantee, these articles and bylaws shall not be amended without the written concurrence of the appropriate CSA administering office.

3. *Issuance of Securities.* A contracting organization which is incorporated as a profit-making entity may not issue securities without prior approval of the appropriate CSA administering office. Copies of any registration statement or notification or prospectus or offering circular prepared in conjunction with an issuance of securities should be sent to the appropriate CSA administering office. Copies of any other documents which the issuer is required to file in connection with any issuance of securities, whether by Federal securities laws or by state blue sky laws, should be sent to the appropriate CSA administering office.

4. *Encumbrance of Assets Acquired with Grant Funds.* Neither the grantee nor a contracting organization may mortgage or otherwise encumber stock or other assets acquired with grant funds without the prior written approval of the appropriate CSA administering office.

[45 FR 39849, June 12, 1980]

**Subpart 1067.9—Special Conditions When a Community Action Component Is Delegated to a Church or Church Related Organization (CSA Instruction 6441-01)**

SOURCE: 44 FR 56577, Oct. 1, 1979, unless otherwise noted.

**§ 1067.9-1 Applicability.**

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

**§ 1067.9-2 Effective date.**

May 10, 1971 (CSA Instruction 6441-01).

**§ 1067.9-3 Purpose.**

To ensure that any component of a community action program which is conducted by a church-related institution is entirely non-sectarian in content and purpose the following special conditions will be applied to any grant under which such an arrangement is intended. The first set of conditions will apply to components involving

church-related schools or school systems; the second will apply in the case of all other activities.

**§ 1067.9-4 Policy.**

These conditions must be incorporated in any contract between a community action agency and a church or church-related organization. In addition, all such contracts must be submitted to CSA for review and approval prior to execution.

**§ 1067.9-5 Conditions applicable to the use of grant funds in church-related schools or school systems.**

(a) The grantee shall ensure, and shall provide in any contract or other arrangement with the church-related school, schools or school system, that:

(1) None of the grant funds shall be used for the teaching of religion, religious proselytization, or religious worship.

(2) There shall be no religious instruction, proselytization or worship in connection with any program supported in whole or in part by this grant and conducted outside of normal school hours (such as after school programs, summer-school programs) or conducted for persons who are not participating in the regular curriculum (such as pre-school, adult-education, or a program for dropouts).

(3) In any of the programs described in paragraph (a)(2) of this section admission shall not be based directly or indirectly on religious affiliation or on attendance at a church-related school or other church-related institution. Affirmative steps shall be taken to make known the general availability of such programs in the areas served.

(4) Participation in programs supported in whole or in part by this grant shall not be used as a means of inducing participation in sectarian or religious activities or of recruitment for sectarian or religious institutions.

(5) The text books and other materials used in programs supported in whole or in part by this grant shall be devoid of sectarian or religious content.

(6) Facilities renovated or rented for programs financed in whole or in part by this grant shall be devoid of sectarian

ian or religious symbols, decoration, or other sectarian identification. Other facilities used primarily for such programs shall, to the maximum feasible extent, be devoid of sectarian or religious symbols, decoration, or other sectarian identification.

(7) Grant funds shall not be used in any manner to release funds regularly expended by the school, schools, or school system. For example, grant funds shall not be used to pay in any part costs which would otherwise be incurred by the school, schools or school system in their regular operation.

(b) The grantee will, before executing a contract with any church-related school, schools, or school system, submit the proposed contract to CSA for approval.

**§ 1067.9-6 Conditions applicable to the use of grant funds for activities to be conducted by a church or church-related organization.**

(a) The grantee shall ensure, and shall provide by contract with any church or church-related institution or organization which is to be delegated the performance of all or part of any component of the approved community action program that:

(1) None of the grant funds shall be used for the teaching of religion, for religious proselytization, or religious worship.

(2) There shall be no religious instruction, proselytization or worship in connection with any program supported in whole or in part by this grant.

(3) Admission to any of the programs supported by this grant shall not be based directly or indirectly on religious affiliation or on attendance at a church, church-related school or other church-related institution or organization. Affirmative steps shall be taken to make known the general availability of such programs in the area served.

(4) Participation in programs supported in whole or in part by this grant shall not be used as a means of inducing participation in sectarian or religious activities or of recruitment for sectarian or religious institutions.

(5) All materials, such as reading materials, used in programs supported

in whole or in part by this grant shall be devoid of sectarian or religious content.

(6) Facilities renovated or rented for programs financed in whole or in part by this grant shall be devoid of sectarian or religious symbols, decoration, or other sectarian identification. Other facilities used primarily for such programs shall, to the maximum feasible extent, be devoid of sectarian or religious symbols, decoration, or other sectarian identification.

(7) Grant funds shall not be used in any manner to release funds regularly expended by the church or church-related institution or organization. For example, grant funds shall not be used to pay in any part costs which would otherwise be incurred by the church or church-related institution or organization in its regular operation.

(b) The grantee will, before executing a contract with any church or church-related institution or organization, submit the proposed contract to CSA for approval.

**Subpart 1067.10—CSA Procedures for the Federal Project Notification and Review System (PNRS) (CSA Instructions 6710-3a and 6710-3a CH2)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 41 FR 28277, July 9, 1976, unless otherwise noted.

**§ 1067.10-1 Applicability.**

(a) Title II:

(1) This subpart is applicable to applications\* for grants under sections 221, 222(a)(5), (7), (12) and 231 of the Community Services Act of 1974 (CFDA Nos. 49.002, 49.005, 49.010, 49.014, and 49.013 respectively) when the funds are administered by the Community Services Administration.

(i) \*EXCEPTIONS: Applications from Federally-recognized Indian Tribes; and applications or portions of applications for funds under the above-mentioned Sections when such funds are for general administration; training and technical assistance for staff development and/or management improvement; and evaluation.



## (b) Title VII:

(1) This subpart in its entirety is applicable to applications\*\* or portions of applications\*\* requesting funds under the following sections of Title VII (CFDA No. 49.011) for the purposes specified:

(i) *Section 747. Planning Grants.*

(ii) *Section 712. Investment capital (budget category 2.5) for specific "community development programs" (as defined in CSA Instruction 6158-3), and "training, public service employment, and social service programs" (as defined in CSA Instruction 6158-3).*

(2) Only §§ 1067.10-6 and 1067.10-4(d) are applicable to applications\*\* or portions of applications\*\* requesting funds under the following section of Title VII for the purpose specified:

(i) *Section 712. Administrative costs (all budget categories other than 2.5), investment capital for specific "business development programs" (as defined in CSA Instruction 6158-3), or investment capital unearmarked at time of application to specific ventures.*

(3) \*\*EXCEPTION: Applications from Federally recognized Indian Tribes.

## § 1067.10-2 Policy.

(a) CSA will not approve any requests for initial funding, refunding, or major changes in work program or level of assistance from any applicant unless the applicant follows the Project Notification and Review System (PNRS) procedures (See § 1067.10-4) for all programs identified in § 1067.10-1.

(b) In the past OEO Form 394 has been used by Title II grantees to checkpoint with local agencies and officials and with SEOOs. Since an active A-95 review process is a direct duplication of the Form 394 checkpoint procedure, the Form will no longer be required where there is an areawide clearinghouse unless the CSA administering office determines that the applicant's comments are not being circulated to all appropriate public and private agencies in which case the administering office may require additional check-pointing through continued use of Form 394. Also, Title II grantees who wish to

continue additional coordination activities with local agencies and local units of government may continue to use the Form 394 on an optional basis.

(c) Effective with the issuance of this Instruction, all applications submitted to CSA will be required to have a SF 424 as a coversheet. (See § 1067.10-4). In addition the SF 424 may be used as the initial notification to clearinghouses where clearinghouses do not require their own forms. (See § 1067.10-4(a).)

## § 1067.10-3 Responsibilities.

(a) *State Governments and Governors.* State governments and Governors may designate State and/or areawide clearinghouses which, among other things, perform functions relating to the coordination of Federal grant program plans. (The Office of Management and Budget (OMB) has issued, and will periodically update, a directory listing of these designated clearinghouses.)

(b) *Clearinghouses.* The areawide and metropolitan clearinghouse(s) inform specific local governments and agencies, including CSA grantees if they have so requested (see § 1067.10-5) and public agencies charged with enforcing or furthering the objectives of State and local civil rights laws, of any proposed projects from other agencies which would have an impact on their programs. Also, State clearinghouses notify state agencies, such as SEOOs, of any proposed projects which would affect their statewide plans and programs.

(c) *Applicants/grantees.* Applicants are required to notify the clearinghouse(s) of the State(s) and either the areawide or the metropolitan area clearinghouse(s) in which the project is to be located of their intent to apply for CSA funds.

(d) *Community Services Administration—(1) CSA Headquarters* is responsible for informing grantees and prospective grantees of the current requirements to notify clearinghouses.

(2) *CSA Regional and Headquarters Administering Offices* are responsible for assuring that:

(i) Grantees are advised of new or re-designated State and/or areawide clearinghouses;

(ii) Grantees seeking initial funding are informed of A-95 requirements and provided copies of SF 424 at the time CSA indicates its willingness to consider their applications;

(iii) Each application has received clearinghouse review where such review is required;

(iv) Each application is accompanied by a completed (Sections I and II) SF 424;

(v) Clearinghouses are notified within seven work days of any major action taken on an application that has been reviewed by the clearinghouses; and

(vi) The appropriate State and areawide clearinghouses have been notified of any application from federally-recognized Indian tribes upon its receipt.

§ 1067.10-4 Procedures.

(a) *Applicant Notification to Clearinghouses of Intent to Apply*—(1) *Who Must Notify Clearinghouses.* Applicants for CSA funds who are seeking initial funding or program year refunding for programs covered by A-95 must provide notification of intent to apply to the appropriate clearinghouses. In addition any grant action made subsequent to a program year refunding which is a major change to the work program and/or a substantial infusion of additional Federal funds in the initial application or is a new project not previously submitted to the clearinghouse also must comply with the notification procedures.

(2) *Timeframe.* (i) Applicants must simultaneously notify both State and area-wide clearinghouses of their intent to apply for CSA funds at least sixty days before the anticipated date of the submission of the final funding application to CSA. This 60-day lead time is necessary to allow each clearinghouse 30 days to consult with State and local agencies and regional/local governments that may be affected by the proposed project, and to submit written comments on the proposal to the applicant; and an additional 30 days, if a clearinghouse

chooses, to review the final completed funding application.

(ii) For applicants seeking initial funding, notification to the clearinghouse will only begin after CSA indicates its willingness to consider applications (development of an application may be requested simultaneously or at some future date). For grantees requesting refunding, initial notification should follow immediately upon receipt of the program and funding guidance or other notice from CSA that it is willing to consider refunding.

(iii) OMB Circular A-95 contains a provision allowing Federal agencies to request procedural variations from normal review processes under certain circumstances. CSA will make use of this provision on a case-by-case basis.

(3) *How.* (i) Many clearinghouses have developed notification forms and instructions. Where such forms exist applicants shall use them to notify clearinghouses.<sup>1</sup>

(ii) Where clearinghouses do not require use of their own forms or formats, applicants have the option of submitting one of the following to the clearinghouses. However, as the SF 424 must accompany every application submitted to CSA it is assumed that most applicants will use the SF 424 as Notice of Intent to Apply.

(A) SF 424, Federal Assistance, with Section I completed PLUS a statement as to whether environmental impact information will be required; OR

(B) A summary of the following:

(1) Identity of the applicant agency;

(2) Geographic coverage of the program proposed;

(3) A brief description of the proposed program including type;

(4) Purpose;

(5) General size or scale;

(6) Estimated cost;

(7) Beneficiaries; or

(8) Other characteristics which will enable the clearinghouse to identify

<sup>1</sup>In accordance with OMB Circular A-95 (Revised) private non-profit applicants are not required to include confidential information concerning the financial status or structure or the personnel of their agency even though this information might be required to be sent to CSA as part of the funding process.

agencies of a State or local government having plans, programs, or projects that might be affected by the proposed programs;

(9) A statement as to whether environmental impact information will be required;

(10) The Federal program title and number and agency under which assistance will be sought as indicated in the latest "Catalog of Federal Domestic Assistance"; and

(11) The estimated date the applicant expects to formally file its funding request.

(b) *Review by Clearinghouses of Notification.* (1) The clearinghouse may notify the applicant, within 30 days of receipt of notice, of its own or other State or local interests. During this period differences may arise between clearinghouses or particular State agencies or local governments as to the merit and/or designation of the planned project. The clearinghouse may work with the applicant in the resolution of any problems. If differences are not resolved, the clearinghouse may inform the applicant of its desire to review, and its intention to prepare comments to accompany, the completed funding application.

(2) Applications for refunding not submitted to or acted on by CSA within one year after completion of clearinghouse review will be subject to rereview upon request of the clearinghouse.

(c) *Submission of the Completed Application to the Clearinghouse.* (1) When within the initial 30 day period the clearinghouse signs off or indicates that it has no comments regarding the proposed project, the applicant may proceed to submit the final funding application to CSA without further delay. In such cases the applicant is not required to submit a copy of its funding application to the clearinghouse. However, the clearinghouse may request an information copy.

(2) However, if within the initial 30 day period the clearinghouse asks to review the final application, the applicant will submit a copy of the funding application to the clearinghouse. In such cases, the clearinghouse(s) shall have an additional 30 days to submit their formal comments on the subject

application. If the applicant failed to submit to the clearinghouse an initial notification of its intent to apply for CSA funds and submitted only a completed application, the clearinghouse shall have a full 60 days to review and submit comments on the application.

(3) It should be noted that areawide clearinghouses must submit to applicants any written comments received from other jurisdictions or agencies or parties when the comments are at variance with the clearinghouse comments. They also must list others who were solicited and from whom they received comments.

(d) *Submission of SF 424's and Clearinghouse Comments to CSA.* Beginning with the effective date of this Instruction, the applicant will submit to the appropriate CSA Regional or Headquarters administering office a SF 424 with each application for initial funding, program year refunding, major change to work program and/or level of Federal assistance, and new projects regardless of whether or not the program is covered by the A-95 process. Grant applications will be unacceptable if not accompanied by the completed SF 424. (See Appendix for a copy of SF 424 with instructions for completion including instructions specifically designed for applicants for CSA funds).

(1) For programs not covered by the A-95 process or for which CSA has received an exemption, the applicant will complete information required in Section I of the SF 424 and indicate "not applicable" in Section II, Item 22.b.

(2) For programs covered by the A-95 process, the applicant will complete all information required in Sections I and II of SF 424 and attach any comments or recommendations received from the clearinghouse(s) along with a statement that such comments have been considered prior to submission of the application. In addition, the applicant will include in Section IV of SF 424 a position statement on any conflicts that have not been resolved between the clearinghouses and the applicant.

NOTE: It would be in the applicant's best interest to notify CSA immediately if any



comments have been received or are anticipated which recommend not funding the application.

(i) Applications that do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant to comply with A-95 procedures.

(ii) If a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the administering office will consult with the agency assisting the referenced project prior to acting if the administering office plans to recommend approval of the project.

(iii) CSA will not accept the grant for processing until the clearinghouse comments have been received or until the final 30 day period has elapsed.

(e) *Notification to Clearinghouses by CSA of Major Grant Actions.* (1) Within seven working days of any major action taken on an application, i.e. award, rejection, deferral, return for amendment, or withdrawal, the appropriate CSA Regional Office or Headquarters office will notify the clearinghouse(s) which reviewed the application. In addition if a clearinghouse recommended against the funding of the application and CSA has decided to award the grant, CSA will include in Section IV of SF 424 a statement of explanation to the clearinghouse.

(2) CSA will notify the clearinghouse(s) by completing Section III of the SF 424 and returning the form, along with any explanatory attachments, to the clearinghouse(s).

**§ 1067.10-5 CSA grantee participation in A-95 coordination process.**

Since OEO Form 394 is no longer required, CSA reminds those SEOOs who currently are not receiving applications for CSA-funded programs for review through the clearinghouse, that they inform the clearinghouse of their interest in receiving these applications for review. CSA grantees, particularly CAAs and SEOOs, should actively seek to review, in addition, applications for Federal assistance from other agencies in their clearinghouse area for programs included in the A-95

process. (See attachments C and D to Circular A-95). Review of notifications and applications for Federal funds should be directed to those programs which could have an impact on the poor.

**§ 1067.10-6 Section 712—On-going and post-grant coordination.**

(a) Because of the nature of the Section 712 Special Impact Program and the funding process followed by CSA's Office of Economic Development for community development corporations (CDCs) under Section 712, there is limited opportunity for, or value to, clearinghouse review of CDC grant applications prior to funding by CSA and, therefore, the A-95 process is applicable only to certain Title VII grants. (See § 1067.10-1). For example:

(1) Once a CDC has received its initial funding from CSA through a planning grant (which is subject to clearinghouse review), the basic issue of the community's need for the CDC has been resolved. Therefore, subsequent refundings of the CDC's central administrative budget are exempted from clearinghouse review.

(2) Since CDCs are refunded for two-year periods, much of the investment capital funding requested in refunding applications is not earmarked to specific ventures; only in the subsequent two years, following grant approval, are specific plans for most ventures developed and submitted to CSA for approval. Accordingly, there is little in the CDC's investment capital budget for clearinghouses to review prior to grant approval.

(3) The bulk of the CDC's proposed ventures, whether specified in the refunding application to CSA or identified and developed after grant approval, fall into the "business development program" category, and are accordingly exempt from clearinghouse review because of their proprietary nature. Most of the feasibility data for such ventures, whether submitted to CSA as part of a refunding application or subsequently, could not be released to the clearinghouses.

(b) Accordingly, only that small portion of a CDC's refunding application which is earmarked for specific ven-

tures in the "community development" and "training, public service employment, and social services" categories is appropriate for review by the clearinghouse prior to funding.

(c) Even some data related to community development ventures, such as land acquisition plans and costs are exempted from clearinghouse review due to the proprietary nature of the data.

(d) Despite such limitations, it is the policy of CSA that CDCs coordinate their programs with local governments and related private agencies and organizations, and that CDCs develop meaningful mechanisms with their local clearinghouses for insuring such coordination on an ongoing basis. Such coordination should include, at a minimum, (1) periodic discussions of the CDC's overall program and objectives, and (2) appropriate reviews, prior to CSA release of funds (though generally not prior to grant approval), of non-proprietary venture plans.

(e) Each CDC, including planning grantees, must include in its next funding application submitted to CSA after 60 days from the effective date of this subpart, a copy of an agreement signed by the CDC and the appropriate area-wide or metropolitan clearinghouse(s) which specifies how this required ongoing and post-grant coordination shall be implemented. All future grant applications and post-grant venture feasibility proposals must include evidence that the required coordination, as provided in the signed agreement, has in fact taken place.

NOTE: Section 1067.10-6 was suspended in part at 42 FR 29873, June 10, 1977.

#### § 1067.10-7 SF 424—Availability.

An initial supply of SF 424, Federal Assistance, will be distributed to all grantees. It should be noted that CSA has overprinted the SF 424 to provide additional information for use of its grantees and administering offices. Therefore supplies of SF 424 should be acquired from CSA only. When the initial supply has been exhausted additional forms may be obtained by writing to: CSA Publications and Distribution Center, 5458 3rd Street NE, Washington, DC 20001.

### Subpart—Amending a Grant Under Title VII of the Community Services Act (CSA Instruction 6710-7)

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

SOURCE: 41 FR 26688, June 29, 1976, unless otherwise noted.

#### § 1067.16-1 Applicability.

This subpart applies to all community economic development grants under Title VII of the Community Services Act of 1974.

#### § 1067.16-2 Definitions.

(a) *Amendment.* Any budgetary or programmatic change in a grant which requires prior CSA approval and which is not a refunding.

(b) *Refunding.* An extension of an existing grant for (1) more than four months beyond its current termination date which obligates additional CSA funds, or (2) more than 12 months even if no additional CSA funds are obligated.

#### § 1067.16-3 Purpose.

This subpart identifies the kinds of budgetary and programmatic changes in Title VII grants which constitute amendments and prescribes the procedures for requesting prior approval from CSA's Office of Economic Development (OED) for such amendments. Procedures for requesting OED approval for grant extensions which constitute refundings may be found in § 1067.15-1 through § 1067.15-12 (CSA Instruction 6710-6). Grantees who are in doubt as to whether proposed grant changes require prior OED approval or whether the procedures in this subpart or in § 1067.15-1 through § 1067.15-12 (CSA Instruction 6710-6) should be followed should consult with the OED project manager for the grant.

#### § 1067.16-4 Grant changes requiring prior OED approval.

Grant changes which constitute amendments, and which therefore require prior OED approval, fall into two basic categories; those involving changes in the grant program and

those involving changes in the grant budget.

(a) *Programmatic Changes which Constitute Amendments.* (1) Basic changes in the overall strategy, objectives, milestones, implementation plan, or major activities of the project as approved by OED.

(2) Significant changes in the number or type of participants or beneficiaries.

(3) Changes in the target area served (if any) under the grant.

(4) Changes in delegate agencies, if any.

(5) Changes in the grantee's articles of incorporation or by-laws.

(6) Changes in or waiver of grant conditions.

(7) Uses of Investment Capital funds for purposes other than those approved by OED or than as provided in a venture autonomy agreement approved by OED or in CSA Instructions.

(8) Changes in the duration of the approved funding period or in the length of time the project will operate.

(9) Restoration of personnel positions or program elements specifically disapproved by OED, or deletion of positions or program elements specifically added by OED, as specified on the OEO Form 325c or special conditions attached to the grant.

(b) *Budgetary Changes Which Constitute Amendments.* (1) Changes which will increase the CSA-funded program costs (i.e., the approved grant budget as shown in Column F (1) of the CSA Form 325) for the current funding period, regardless of whether such increased cost will:

(i) Require increased (i.e., supplemental) OED funds; or

(ii) Require no additional OED funds because of the availability of larger than anticipated unexpended balances from prior funding periods (Note: the availability of unexpended funds from prior funding periods does not constitute the authority to spend them).

(2) Changes in the expenditure rate for continuing costs such that total grant funds will be expended prior to the termination date of the current grant, thereby necessitating refunding

(where applicable) prior to the scheduled date.

(3) Changes in the expenditure rate for continuing costs such that even if total funds will not be expended prior to the termination date of the current grant the annualized costs in subsequent funding periods will be significantly higher.

(4) Any increase or decrease in the OED-approved budget for cost category 2.5, Investment Capital, by shifting funds from or to other cost categories.

(5) Any increase in the OED-approved budget for cost category 3.0, Indirect Costs, where applicable.

(6) Any initial salary, or any increase in salary, for any position which exceeds CSA limitations on salary increases or CSA wage comparability standards as prescribed in (OEO Instruction 6900-01 and 6900-02).

(i) (NOTE: even if OED has approved a given salary level for a position, depending upon his/her prior salary levels a given incumbent of that position may be proscribed from receiving that maximum salary by OEO Instruction 6900-01).

**§ 1067.16-5 Changes allowable without OED approval.**

Except as provided in § 1067.16-4 or as prohibited by CSA grant conditions or regulations, Title VII grantees may make other programmatic and budgetary changes in their approved grants without prior OED approval (in accordance, of course, with their own bylaws, published personnel policies, regulations, etc.). Such changes include: (a) Creation or abolishment of staff positions, or changes in duties.

(b) Increases or decreases in salaries for individual positions.

(c) Increases or decreases in budget cost categories 1.1-2.4 and 2.6, or decreases in cost category 3.0, by shifting funds among such cost categories.

**§ 1067.16-6 Submission of amendment requests to OED for approval.**

(a) Any programmatic or budgetary change constituting an amendment (see § 1067.16-4) may *not* be made by a Title VII grantee without prior OED approval. Such approval must be in writing and may be given only by the



Director of OED or his Deputy (the only OED officials authorized to approve Title VII grants). Oral "authorization" by any OED employee or written "authorization" by any OED employee other than the director or his deputy shall not constitute OED approval. Moreover no grant amendment may become effective until the date the written approval is signed.

(b) The documentary requirements for amendment requests are relatively simple. An amendment request consists of from one to four numbered forms as follows:

(1) OEO Form 315a Grantee Quarterly Financial Report (requests for nocost extension in excess of 4 months).

(2) CSA Form 325b, Request for Amendment to Grant (all requests).

(3) CSA Form 325, Budget Summary (requests for budgetary changes).

(4) CSA Form 325a Budget Support Sheets (requests for budgetary charges).

(c) Copies of these forms may be found in Appendix A<sup>1</sup> to this subpart.

(d) An original and seven copies of all amendments requests, regardless of the OED division that monitors the projects, should be mailed to:

(1) Program Management and Support Division, Office of Economic Development, Community Services Administration, 1200 19th Street N.W., Washington, D.C. 20506.

(e) Distribution of copies to the OED project manager and other appropriate CSA/OED personnel will be handled by the Program Management and Support Division.

(f) Specific instructions on the preparation of these forms are provided in paragraphs (f)(1) through (4) of this section:

(1) OEO Form 315a, Grantee Quarterly Financial Report. See CSA Instruction 6807-2.

(2) CSA Form 325b, Request for Amendment to Grant. This form is used for all amendment requests. Where the request involves no budgetary changes, the CSA Form 325b is the only form required. The form is self-explanatory; it provides essential-

ly for a narrative description of the programmatic and/or budget changes requested. Blank sheets should be used to complete any continuation pages. If the amendment involves changes in the grantee target area, by-laws, etc., appropriate documents such as maps, new proposed by-laws, etc., should be attached to the CSA Form 325b.

(3) CSA Form 325, Budget Summary. This form is used when the requested amendment involves an increase in the total program cost (whether or not supplementary funds are required), an increase or decrease in the Investment Capital cost category, an increase in the Indirect Cost category (if applicable), or an extension of the funding period without additional funds (a "no-cost extension") for four to twelve months beyond current termination date (NOTE: no-cost extensions of four months or less require only the CSA Form 325b; no-cost extension of more than 12 months are refundings, subject to CSA Instructions 6710-6). Detailed instructions on how to complete CSA Form 325 for amendment requests may be found in CSA Instruction 6710-8.

(4) CSA Form 325a, Budget Support Sheets (Parts I and II). (i) This form will normally be used in any amendment request involving an increase in program costs (whether or not supplementary funds are requested), or a no-cost extension for more than four months. It may even be necessary for certain requests to shift funds among budget cost categories. However, there may be fairly simple amendment requests where the necessary budgetary back-up justification can be provided directly in the narrative on the CSA Form 325b, in which case the CSA Form 325a will be unnecessary.

(ii) Where the CSA Form 325a is used, it will provide the detailed cost basis for each budget cost category affected by the requested amendment. The figures on the CSA Form 325a will then be summarized, by cost category on the CSA Form 325. Detailed instructions on how to prepare grant budgets and CSA Form 325a may be found in CSA Instruction 6710-8.

<sup>1</sup>Not filed with the Office of the Federal Register. Forms available from the Community Services Administration.

## § 1067.16-7 Amendment approval/disapproval and post-approval requirements.

(a) Upon receipt of an amendment request it will be reviewed by the appropriate OED staff and either approved or disapproved. If the request is disapproved, the "Disapproved" box will be checked on the bottom of the CSA Form 325b, and the form will be signed and dated by the OED director or deputy director and returned (together with any supporting forms and documents) to the grantee.

(b) If the request is approved, the procedure followed by OED will depend on the nature of the amendment request, as follows:

(1) *Amendments Which Neither Obligate New Funds Nor Extend the Grant Period.* OED approval will be indicated by checking the "Approved" box on the bottom of the CSA Form 325b, and by signing, dating, and returning the form (together with any supporting forms and documents) to the grantee. If any modifications are made in the amendment as approved, such modifications will be indicated on the CSA Form 325b or on attached conditions or explanatory materials. If the amendment involves a budgetary change, OED will complete Column F of the CSA Form 325 submitted by the grantee with the amendment request and will return the 325 along with the 325b to the grantee. The CSA Form 325, with Column F completed, will now constitute the official, approved grant budget as amended.

(2) *Supplemental Grants and No-Cost Extensions.* OED approval of grant amendments involving the obligation of additional funds or extending the funding period beyond the current termination date is indicated in the same way as the initial grant or re-funding, by executing a CSA Form 314, Statement of CSA Grant. For this group of amendments OED approval is not shown on the CSA Form 325b, and that form is therefore not returned to the grantee. If the approved amendment involves a supplemental grant, the amount of the new funds awarded will be shown on the CSA Form 314 (not the total grant as amended). If the amendment is a no-cost extension, the CSA Form 314 will show zero (0) funds awarded but will indicate the

new, extended termination date for the grant. If the amendment both supplements and extends the grant, the CSA Form 314 will indicate both the amount of new funds awarded and the new, extended termination date. For supplemental grants and no-cost extensions of four to 12 months, the CSA Form 325, with Column F completed by OED, will be attached to the CSA Form 314 to indicate the new revised budget (for either the current grant period as amended or for the new extended period) as approved by OED. For no-cost extensions of four months or less, the grantee was not required to submit a CSA Form 325 and therefore no such form will be attached to the CSA Form 314. If OED approval of the amendment is contingent on certain conditions or modifications, special conditions or an explanation of program or budget changes will be attached to the CSA Form 314.

(c) Following receipt by the grantee of a signed CSA Form 325b approving an amendment which neither obligates new funds nor extends the grant, the grantee need take no further action, unless the amendment was approved subject to certain conditions requiring action by the grantee. Following receipt by the grantee of a signed CSA Form 314 approving a supplemental grant or no-cost extension, the grantee must sign the CSA Form 314, as in the case of the initial or re-funding grant, and return it to OED to signify official acceptance of the grant or extension. If any special conditions are attached, the grantee must also take such action as is indicated.

**Subpart—Preparing a Budget for a Title VII Grant Under the Community Services Act (CSA Instruction 6710-8)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 41 FR 26689, June 29, 1976, unless otherwise noted.

**§ 1067.17-1 Applicability.**

This subpart applies to all applications for community economic development grants under Title VII of the Community Services Act of 1974.

## § 1067.17-2 Purpose.

This subpart prescribes the requirements and procedures for preparing a budget for Title VII applicants.

## § 1067.17-3 Preparation of budget forms for grant action.

(a) Budgets must be submitted for the following types of grant actions:

(1) Initial and Refunding Grants. See CSA Instruction 6710-6.

(2) Budget Amendments. See CSA Instruction 6710-7.

(b) CSA Form 325, Budget Summary, is required to describe the proposed budget. The budget detail should, in most cases, be presented on CSA Form 325a, Budget Support Sheet. Salaries and wages are listed in Part I of the CSA Form 325a, and other expenses are listed in Part II. They should be grouped by the following budget categories:

## BUDGET CATEGORY

- (1) 1.1 Salaries and wages.
- (2) 1.2 Fringe Benefits.
- (3) 1.3 Consultants and Professional Services.
- (4) 2.1 Travel.
- (5) 2.2 Space Costs and Rentals.
- (6) 2.3 Consumable Supplies.
- (7) 2.4 Lease and Purchase of Equipment and Property.
- (8) 2.5 Investment Capital.
- (9) 2.6 Other Direct Costs.
- (10) 3.0 Indirect Costs.

## § 1067.17-4 CSA Form 325a, Budget Support Sheet (Parts I and II).

(a) This form will be used in all initial and refunding grants and normally in any amendment request involving an increase in program costs (whether or not supplementary funds are requested) or a no-cost extension for more than four months.

(b) It may even be necessary for certain amendment requests to shift funds among budget cost categories. However, there may be fairly simple amendment requests where the necessary budgetary back-up justification can be provided directly in the narrative on the CSA Form 325b, Request for Amendment to Grant, in which case the CSA Form 325a will be unnecessary.

(c) The CSA Form 325a should be completed before CSA Form 325, de-

tailoring the cost basis for each budget cost category. Under Part II more than one category may be shown on the same page if space allows. Additional copies of the 325a should be used as continuation sheets to complete Part II (or in unusual cases where the number of personnel exceeds the number of lines on the form, to complete Part I). Once the 325a is completed, the totals should be carried over to column D or E, depending on the type of grant action, of section I on the 325.

(1) *Part I (Salaries and wages: Budget category 1.1).* Items 1, 2, and 3 are selfexplanatory. Under items 4 and 5 enter the salary, wage or the valuation of services of all paid employees and volunteers participating in the program.

(i) *Paid personnel.* (A) All salaries of grantee employees paid with CSA project funds must be established as a part of a structured salary plan which sets salaries or salary ranges for each position or group of positions based on the responsibilities of the position, its relationship to other positions, and the salaries of comparable positions in other public or private non-profit agencies.

(B) Any person hired to fill a CSA funded position must be paid at a rate no higher than the rate established for that position in accord with most appropriate local comparability or at a rate comparable to that paid for similar positions in the community from which the applicant was hired. (The grantee should have a record of the comparability data and be able to produce such upon request by CSA). For salaries in excess of \$15,000 per year, comparability data should accompany the application. See OEO Instruction 6900-02.

(C) Salaries entered on the 325a are maximums. Applicants are cautioned that particular incumbents of any given position may be prescribed from receiving such maximums by the provision of OEO Instruction 6900-01, which limit entry salaries or salary increases to 20% or \$2,500, whichever is smaller, of an individual's prior annual salary.

(D) A separate entry should be made on the 325a, item 4.A for each differ-



ent position title. If two or more employees are employed in identical positions, only one entry should be made in 4.A with the number of employees in the position shown in parentheses after the position title. The entries in 4.B and 4.C should be the man-months and salaries for an employee in the respective position in 4.A multiplied by the number of employees in that position.

(E) On the Budget Support Sheet, part-time employees should be shown separately. Do not list two employees each working half a year as one employee working full-time. Where a position is part-time the fraction of full-time employed (e.g. half-time or one-third time) should be shown in parentheses after the position title. The number of man-months shown for a part-time position should in all cases be based on full-time employment. For example, a half-time employee working for an entire year is considered to work six man-months.

(ii) *Volunteers.* If volunteer workers are going to participate in the program, their time may be valued for the purpose of calculating non-Federal share. Valuation methods are prescribed in § 1068.9-1 through 1068.9-5 (OEO Instruction 6802-1a). A person should be treated as a volunteer only if he receives no compensation from anyone for work in the program. All volunteer positions should be entered in item 5 of the 325a. When an employee is paid but an employer other than the grantee furnishes the services, he should be listed under item 4 of the 325a and his services valued in 4.E at his regular rate of pay, provided these services are in the same skill for which he is normally paid. This would be the case, for example, if a private law firm assigned an employee to work one day a week in a CSA funded CDC office.

(2) *Part II (Budget support data: Cost categories 1.2-3.0).* (i) Estimated costs or valuations for all projected program needs, other than salaries, wages and volunteer services are to be entered in this part.

(ii) Items 1, 2, and 3 are self-explanatory.

(iii) For each budget item enter:

(A) Its cost category number (see section below on cost categories for further guidance) under column A.

(B) A description of the item and its basis for valuation under column B (NOTE: For items under Cost Category 2.5—Investment Capital the basis for valuation is not required. Only identify, to the extent possible, the ventures or types of ventures to be invested in, including revolving loan or loan guarantee funds, where applicable. For all entries in other cost categories show how the Federal and non-Federal estimates were numerically derived. See sections below on cost categories for further guidance.)

(C) The Federal share of its estimated cost under column C.

(D) The non-Federal share of its estimated cost or valuation, under column D.

(iv) All budget items under Part II are to be grouped under the following cost categories:

(A) *Cost category 1.2: Fringe benefits.* (1) This category includes not only such items as health insurance, life insurance, and retirement contributions, but also workmen's compensation, unemployment taxes, and social security taxes.

(2) If fringe benefits shown are a percentage of total compensation, the applicant should identify each benefit and its share of the overall percentage figure, e.g., employer's contribution for social security.

(3) Fringe benefits must cover at least social security and workmen's compensation. Other options which may be included in fringe benefits are health insurance, life insurance, and retirement. However, when these fringe benefits do include the added options, the options should be equitable to both high and low salaried employees. Plans which are only affordable by high salaried people should not be acceptable in CSA funded antipoverty programs. A 15% fringe total is average for Title VII grantees.

(B) *Cost category 1.3. Consultants and Professional Services.* (1) This category includes legal fees, accountants' fees, consultants' fees, and the like.

(2) A reasonable percentage of the budget (depending on specific programs and need for training) may be

set aside for consultant and professional services. The two most important areas which must be covered (whether with Federal or non-Federal funds) are audits and legal fees.

(i) *Audits.* CSA grant funds may not be used to pay for more than one audit annually, except where CSA requests in writing additional audits. For detailed CSA audit requirements see OEO Instruction 6801-1. Generally, the cost of an audit will depend on the size of the grant, whether or not there are any delegate agencies, where the records are located (in one place or scattered) and how well the grantee's accounting procedures were set up. Audit costs will also vary in different localities. A cost of \$3,000-\$5,000 for an audit on a \$1 million grant is considered reasonable. The grantee may wish to talk with several CPA's in the area before selecting the contractor to insure the CPA's estimate is fair. For Title VII grantees which have ventures in addition to administrative funds to audit, the cost of the audit will be higher.

(ii) *Legal fees.* Legal fees are paid on a case-by-case basis. Title VII grantees' legal fees average \$2,000-\$4,000 per year.

(iii) *Other consultant service.* May include board training, staff training, management training, feasibility studies and surveys. In estimating the other consultant costs the following should be considered: Number of days, daily fee rate, cost of transportation, and per diem. Normally \$100 per day is the maximum daily fee permitted. However, in view of the highly technical specialists frequently required in certain ventures and business planning, fees in excess of \$100 per day are allowable for certain Title VII grantees under conditions described in the general or special conditions to such grants. Where such higher fees are allowable an average of \$150 per day is usually quite adequate.

(C) *Cost category 2.1: Travel.* (1) Cost of travel should be broken down in Part II of the 325a in terms of travel within grantee's target area, and travel outside of the area. Items covered should include number of employees or board members expected to travel, number of miles at  $\times$  cents a

mile, or number of trips outside target area and average cost of trip and per diem. See example below:

(i) Number of travellers  $\times$  number of miles  $\times$  number cents per mile = cost of travel in target area.

(ii) Number persons travelling  $\times$  number trips per person  $\times$  average cost per trip (air fare + per diem + other costs—taxi, phone, etc., usually \$10 per day per person is adequate) = cost of travel outside target area.

(D) *Cost category 2.2: Space costs.* (1) Projects located in urban areas will normally have to spend more money per square foot of space than projects located in rural areas. The Office of Economic Development can provide to grantees upon request estimates for the cost per square foot of space in all cities in the country which GSA uses as a guideline in determining reasonable costs.

(2) GSA estimates that approximately 150 square feet of space as an average is needed for professional employees. For clerical positions approximately 60-75 square feet of space is needed per person plus file space. In general, an average of 105 square feet per person is a reasonable allotment of space. This does not include meeting rooms, etc. Space costs are determined by multiplying the number of employees  $\times$  square feet per person  $\times$  the cost per square foot of the space. The cost of space per square foot normally includes maintenance and utility charges. Grantees should generally not enter into a lease where these charges are not included. An exception might be made for grantees who own maintenance companies and may want to channel this money into their own businesses. In these cases, the cost per square foot of space should be reduced to accommodate these charges. Separate charges for maintenance should be accounted for under cost category 2.6—Other Direct Costs.

(3) It is also recommended that a grantee take a lease for the period of the grant with an option to renew. A short lease which would expire during the course of the grant period may cause the grantee to have to move. A lease longer than the period of the grant may cause legal problems in the

event the grantee does not have funds to continue.

(E) *Cost category 2.3: Consumable supplies.* Consumable supplies include desk top items—pens, pencils, paper, cellophane tape, staples, etc. If a grantee publishes a newsletter or if a support grantee provides a service requiring frequent contact with other grantees through the mails, the costs will be higher than average.

(F) *Cost category 2.4: Lease and purchase of equipment and property.* The rule of thumb to use in determining whether or not to lease or purchase equipment and property is: If 3 years' leasing cost is more than the purchase price plus servicing costs, it is more economical to purchase the equipment. If a grantee is leasing equipment, it frequently is an advantage to do so with the option to buy.

(1) Proposed purchases of property with a unit cost of more than \$500 must be specifically approved by OED. Such purchases should be itemized in Part II of the 325a.

(G) *Cost category 2.5: Investment capital.* (1) This category includes such items as transportation of things, repairs, utilities, telephone, postage, insurance, bonding, etc.

(2) This category also includes stipends which may be paid to program beneficiaries to support them during their participation in a program.

(3) Dues for membership of the grantee in professional organizations may be included in this category, but only if the grantee's membership can be shown to be related to the purposes of the CSA grant. Dues paid for individual memberships, as contrasted with agency memberships, in professional organizations will not be allowed.

(4) Bonding should be secured in the aggregate amount of \$25,000 for persons authorized to sign or countersign checks or disburse sizable amounts of cash. (See OEO Instruction 6809-01), and the costs for bonding included in this category.

(H) *Cost category 3.0: Indirect costs.* (1) The indirect costs of a project are those costs incurred by an organization for the joint benefit of the approved CSA program activity and other objectives, but not readily iden-

tifiable with the CSA program itself—as in the operation and maintenance of buildings or in the payment of utility costs or administrative salaries.

(2) CSA funds are only provided for indirect costs applicable to research or demonstration projects conducted by institutions of higher education, State and Local governments, hospitals and other non-profit institutions. When a claim is made for indirect costs, the basis for the indirect cost rate must be explained in detail. If the applicant organization has negotiated an indirect cost rate with another Federal agency, the applicant should include an attachment to the CSA Form 325 showing the rate, Federal agency and date negotiated. CSA will review this established indirect cost rate and determine its acceptability.

(3) The provisional approval by CSA of an indirect cost rate in a budget is subject to final negotiation and/or adjustment based upon an audit.

[41 FR 26689, June 29, 1976, as amended at 45 FR 64940, Oct 1, 1980]

§ 1067.17-5 CSA Form 325, budget summary.

This form will be used in all initial and refunding grants and all budget amendments.

(a) *Initial Grants.* Applicants for initial grants should complete only items 1, 2, 3B, Columns E(1) and (2) of Section I, and item 1 of Section II on the CSA Form 325. Where the applicant has been informed that non-Federal share is not required Column E(2) should be left blank.

(b) *Refunding Grants.* Applicants for refunding should complete items 1 through 3 Columns C(1) and (2) and E(1) and (2) of Section I, and item 1 of Section II of the CSA Form 325. Where non-Federal share is not required Columns C(2) and E(2) should be left blank. The figures in Column C should be taken directly from Column F of the CSA Form 325 of the last previous OED grant or amendment action. Any adjustments within the grantee's flexibility should be included. The figures in Column E for refunding actions should reflect the total budget authority requested which may be greater than the



amount of new funding requested if the grantee has unexpended balances from the current grant. The figures in Column E should not be reduced by the amount of such unexpended balances. The most recent OEO Form 315a, Quarterly Financial Report, Support Data Sheet, must be attached to the 325 as support for the amount of unexpended funds claimed in Block 3D.

(c) *Budget Amendments.* For all categories of amendments 1, 2, 3.A, and 3.C on the CSA Form 324 are self-explanatory, Columns C (1) and (2) should show the safe figures appearing in Columns F (1) and (2) of the last previous CSA Form 325 approved by OED (unless adjusted by the grantee within the flexibility), and Section II should be omitted. Instructions for completing items 3.B and 3.D and columns D and E vary depending on the nature of the amendment request, as follows:

(1) *Increase in Total Program Costs—No Additional Funds.* This type of amendment is required when the grantee has previously underestimated, at the time of the last refunding, the amount of unexpended CSA funds, and now is requesting authority to use those unexpended funds. Item 3.B should indicate the beginning and ending dates of the current funding period. Item 3.D should indicate the amount of unexpended CSA funds at the end of the prior funding period above and beyond the amount of CSA funds previously estimated by the grantee to be unexpended. For example, if the grantee previously, at the time of refunding, estimated unexpended funds to be \$20,000, and the actual unexpended balance was \$50,000, the figure in Item 3.D should be the difference, or \$30,000. In item 3.D cross out the word "current" and substitute "prior". Column D should be completed so that the total of Column D(1) should equal the amount in item 3.D, with the total additional budget authority requested allocated to one or more cost categories. Column E should be a total, by cost category of Columns C and D.

(2) *Increase in Total Program Costs—Supplementary Funds.* (i) The beginning date in item 3.B should be

the beginning date of the current funding period. If the amendment request is to supplement the current grant without extending the funding period beyond the current termination date, the ending date in item 3.B should be the termination date of the current funding period. If the request is to both supplement and extend the grant, the ending date in item 3.B should be the ending date of the requested extension. (NOTE: If the period of extension exceeds four months refunding application procedures should be followed.)

(ii) Item 3.D will normally be left blank, unless the grantee is both requesting authority to use unexpended funds and requesting additional new funds as well, in which case item 3.D will be completed as in section (1) above. Columns D (1) and (2) should be completed to show, by cost category, the amount of additional budget authority requested. Where item 3.D has been left blank, the amount of the supplementary funds requested will equal the additional budget authority requested; where unexpended funds have been shown in item 3.D, the difference between the additional budget authority requested and the unexpended funds. Columns E (1) and (2) will be the totals of Columns C(1) and D(1) and of C(2) and D(2), respectively. If an extension of the funding period is being requested in addition to supplementary funds, the number of months of operation shown in Column E should be the total of the current funding period and the extension period.

(3) *Shifts between cost categories.* (i) Sections 1067.16-1 through 1067.16-7 (CSA Instruction 6710-7) provides instructions as to the flexibility which each grantee has in shifting funds between cost categories. For shifts in excess of that flexibility a budget amendment request is required. The beginning and ending dates in item 3.B should be the beginning and ending dates of the current funding period. Item 3.D should be left blank. Column D should show the requested increase or decrease in cost category 2.5, Investment Capital, or (for those few research or demonstration grants where indirect costs have been approved) the

requested increase in cost 3.0, Indirect Costs and the offsetting decreases in one or more other cost categories.

(ii) Increase should be designated with plus (+) signs; decreases with minus (-) signs. The total Column D should be zero (0), since the total increases will be offset by the total decreases. Column E should be a total, by cost category, of Column C and D. The total for Column E will be the same as the total for Column C.

(4) *No-cost extensions of four to twelve months.* (i) Normally, when the funding period of a grant is extended for more than four months beyond its current termination date the extension is considered a refunding, subject to the requirements of § 1067.15-1 through § 1067.15-12 (CSA Instruction 6710-6). However, since no-cost extension from four to 12 months involve the obligation of no additional funds and extend the grant for periods shorter than a normal refunding period, the documentary and procedural requirements applicable are those of an amendment. No-cost extensions of more than 12 months are subject to refunding procedures.

(ii) Since a no-cost extension of four to 12 months is in effect a refunding, the CSA Form 325 that accompanies this form of amendment request is prepared as if a refunding were being requested. Accordingly, the beginning and ending dates in item 3.B should be the appropriate dates for the period of the extension, i.e., the day after the current grant's termination date and the day the extension period will end. Item 3.D should always be completed, since if there are no unexpended funds available to cover costs to be incurred during the extension period a supplementary grant rather than a no-cost extension would be required. The figure to be inserted in item 3.D will be the unexpended balance as of the end of the current grant. The most recent OEO Form 315a, Quarterly Financial Report, Support Data Sheet, must be attached to the 325 as support for the amount of unexpended funds claimed in block 3.D.

(iii) Since this kind of amendment request is prepared as a refunding, Column D of the CSA Form 325 should be left blank. Column E should

be completed, showing the requested budget, by cost category, for the period of the extension (rather than a budget for the combined current period and the extension period). The total of Column E(1) should equal the figure in item 3.D since the requested budget is in effect a plan for using the unexpended funds available.

**Subpart 1067.30—Preparation of CSA Form 314, Statement of CSA Grant (CSA Instruction 6710-CH10)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 41 FR 56197, Dec. 27, 1976, unless otherwise noted.

**§ 1067.30-1 Applicability.**

This subpart applies to all grants to public and private organizations made under Titles II, III-B, and VII of the Community Services Act when such assistance is administered by the Community Services Administration.

**§ 1067.30-2 Definitions of terms as used in this subpart.**

(a) A program year is a grantee's 12-month accounting period. For community action agencies, this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA this is their usual 12-month accounting period which may or may not correspond with the funding period of their grant(s) from CSA.

(b) *A program account funding period* extends from the effective date of a new or refunding action (Item 3) through the termination date (Item 12) or expiration of planned number of months for which funding is provided (Item 13). (See attached CSA Form 314.)

(c) *Unobligated balances*<sup>1</sup> (i.e., Unexpended funds) is that portion of the funds authorized by CSA which has not been obligated by the grantee prior to program year end or other 12-month accounting period.

<sup>1</sup>Source: OMB Circular A-110 and FMC 74-7.

(d) *Obligations*<sup>1</sup> is that amount of orders placed, contracts and grants awarded, services received, and similar transactions during a given period which will require payment during the same or future period.

#### § 1067.30-3 Purpose.

This subpart provides for:

(a) Use of a single grant number for each grantee;

(b) Use of CSA Form 314, Statement of CSA Grant, as the basic action document; and

(c) Grantees' use of funds until fully expended unless a termination date is entered in column 12 of CSA Form 314.<sup>2</sup> Since all grant monies must be expended under an approved and current work program, CSA may reprogram such funds as part of subsequent grant actions.

#### § 1067.30-4 Policy.

(a) All grants made to the same organization will be identified by a single grant number.

(b) The Statement of CSA Grant, CSA Form 314, is the basic action document completed by CSA and sent to the grantee. CSA Form 314 is also an acceptance document upon which the grantee indicates his acceptance of the grant action with all attached conditions.

(c) Approval of a CSA grant or funding action means that Federal funds have been awarded to the grantee for the purpose of carrying out an approved work program. Specifically, CSA Form 314, Statement of CSA Grant, is used to:

(1) Approve an amount of Federal funds and specify the required non-Federal share percentage and amount for each program account;

(2) Approve transfers of funds between program accounts when required (reference OEO Instruction 6710-1, Change 3, relating to flexibility guidelines);

(3) Approve program extensions where no change in funding is involved; and

(4) Deobligate funds as necessary from an on-going project or remaining from a terminated program.

#### § 1067.30-5 Procedure.

(a) A single grant number is used to identify CSA grants, regardless of the source of funding within CSA.

(b) The following explanations refer to specific items on CSA Form 314, Statement of CSA Grant:

(1) *Item 1—Name and address of grantee.* This item is self-explanatory.

(2) *Item 2—Grantee number.* This space contains a five-digit number assigned by CSA. All funds awarded to a grantee will be identified by this number.

(3) *Item 2—Fund source code (FS).* This space contains an applicable alphabetic character identifying the source of CSA funds from among the following:

F—Office of Economic Development.

G—Office of Operations.

J—Boston Region (1).

K—New York Region (2).

L—Philadelphia Region (3).

M—Atlanta Region (4).

N—Chicago Region (5).

P—Dallas Region (6).

Q—Kansas Region (7).

R—Denver Region (8).

S—San Francisco Region (9).

T—Seattle Region (0).

(4) *Item 2—Federal fiscal year (FFY).* This refers to the Federal fiscal year in which funds are awarded (i.e., for the Federal Fiscal Year ending September 30, 1977, 77 would be entered).

(5) *Item 2—Action number.* This is a consecutive number assigned by the funding office to identify each funding action by grantee within a Federal fiscal year. For example the number "01" will be assigned to the first funding action by a Regional Office; the number "01" will likewise be assigned to the first funding action by a Headquarters Program Office and so on through the end of the Federal fiscal year, at which time the fundings in the next fiscal year would begin with "01."

(6) *Item 3—Effective date.* This is the effective date of the funding action; i.e., obligations, deobligation, extension, etc. If funds are being obligated, grantees may not incur costs against

<sup>1</sup>Source: OMB Circular A-110 and FMC 74-7.

<sup>2</sup>As provided in OEO Instruction 6714-1 grantees should expend funds provided by old letters-of-credit before drawing down against a new letter-of-credit.



this funding action before the date shown in this block.

(7) *Item 4—Obligation date.* This is the date on which a grant action (CSA Form 314) obligating new funds is mailed to the Governor or grantee. Enter the effective date (Item 3) for all other types of actions, e.g., deobligations, extensions, etc.

(8) *Item 5—Program year.* This section will show the grantee's program year. This period will not necessarily agree with the period for which funds are awarded. However, whenever possible the grantee's fundings will coincide with the grantee's program year.

(9) *Item 6—Program account number.* This will show the program accounts (i.e., 01, 05, 55, etc.) as explained in CSA Instruction 6100-1a, Program Account Structure, funded by this grant action.

(10) *Item 7—Program activity code (PAC).* This code is for identification of CSA obligations, as explained in OEO Staff Manual 2135-1, Accounting Codes.

(11) *Item 8—Program account name.* This will show the program account being funded by this grant action by name. Refer to OEO Instruction 6100-1a, Program Account Structure.

(12) *Item 9—Federal funds awarded this action.* (i) *Funds awarded.* This column shows the amount of Federal funds awarded by this action. An amount will be shown for each program account funded by this action and the total shown at the bottom of the column. Previous amounts awarded to the grantee will not be shown on this form.

(ii) *Funds deobligated.* A deobligation of Federal funds will be shown in this column by placing a minus (–) sign in front of the amount.

(iii) *Funds transferred.* This column is also used to reflect CSA's approval for the transfer of funds between program accounts (reference OEO Instruction 6710-1, Change 3) by placing the appropriate (+) and (–) in front of the amounts representing the increase and decrease. Only the amount being transferred will be reflected in this column and not the original amount awarded.

(13) *Items 10 and 11—Non-Federal share.* These columns show the per-

centage and amount of non-Federal share required for each program account. If the non-Federal share is not required for a program account, not applicable (N/A) will be entered in this space. In no case will a figure higher than that legally or administratively required be entered.

(14) *Item 12—Termination date.* When a termination date is entered, expenses may not be incurred for the program account beyond this date. When this date is entered, this will determine the end of the program account funding period.

(15) *Item 13—Planned number of months funding provided.* This information is to assist the grantee in planning and budget control and in determination of the program account funding period.

(16) *Item 14—Recommendation for approval.* Contains name of appropriate Regional Director.

(17) *Item 15—Statement of CSA approval.* This item is self-explanatory.

(18) *Item 16—Grantee acceptance of grant.* This item is self-explanatory.

**Subpart 1067.40—Applying for a Grant Under Title II, Sections 221, 222(a), 231, and 232 of the EOA (CSA Instruction 6710-1 CH 11)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 42 FR 10689, Feb. 23, 1977, unless otherwise noted.

**§ 1067.40-1 Applicability.**

This subpart applies to all applications for funding under Title II, Sections 221, 222(a), 231 and 232 of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration. The provisions of this subpart also may be extended to other programs under the Act when the applicable program regulations so indicate.

[42 FR 10689, Feb. 23, 1977, as amended at 46 FR 43691, Aug. 31, 1981]

**§ 1067.40-2 Policy.**

CSA continues to support the position stated in 1971 that grantees must increase their independence and self-

reliance and be concerned with solidly establishing community action concepts so that these achieve a genuine self-sustaining life on their own. In order to furnish grantees support for this evolution, CSA has permitted, and will continue to permit, flexibility in developing, justifying, and locally implementing the means for planning, programming and budgeting to meet the perceived needs of their constituencies. For local initiative programs funded under Section 221 of the Economic Opportunity Act, the grantee has been given increased responsibility to select and develop the programs which will be most meaningful to its community. The implementation of such grantee plans and programs remains subject to the approval of the grantee's governing board. CSA exercises its program review authority through continuous monitoring and evaluation of performance, review for compliance for eligibility and auditing for financial management evaluation.

**§ 1067.40-3 Application process for funds under Title II, Sections 221, 222(a), and 231 of the EOA.**

(a) *Overview of the application process.* The grant application process for Title II funding consists of the following steps which, except as noted, apply to all initial and refunding grants:

- (1) Initial inquiry (initial grants only).
- (2) Submission of notification of intent to clearinghouse by applicant.
- (3) Submission of documents re eligibility for funding to Administering Office.
- (4) Determination or verification of grantee eligibility by Administering Office.
- (5) Planning Process undertaken by applicant.
- (6) Receipt of program and funding guidance.
- (7) Field Pre-review (optional)
- (8) Submission of formal application.
- (9) Review by Administering Office of grant application.
- (10) If acceptable, recommendation for funding and submission of grant funding documents to Headquarters funding official for action.
- (11) If approved, and after Congressional release has been accomplished,

submission of approved grant package to Governor's office.

Note: Submission to Governor's office does not apply to any institution of higher education, as defined in Section 401(f) of the Higher Education Facilities Act of 1963, which was in existence on or prior to August 20, 1964.

(12) Submission of approved grant documents to grantee for acceptance.

(13) Grantee returns signed CSA Form 314 to administering office.

(14) Governor responds or 30 day waiting period elapses.

(15) Funds release accomplished.

(b) *Initial inquiry.* Applicants' for grants under Sections 221, 222(a) and 231 who are not currently funded by CSA should make an initial inquiry to CSA, by either letter or telephone, prior to submitting a written application unless, of course, the program guidelines for a program indicate a specific office or individual to be contacted. Such inquiry is essential to determine the appropriate program authority under which application should be made, the availability of funds, funding timetable and deadlines, special requirements for particular programs, specific instructions and procedures for determining eligibility and for submitting a formal application. All inquiries should be directed to the appropriate Regional Office unless otherwise indicated in specific program guidelines. Initial inquiries will normally not be necessary for current recipients of Title II grants since the CSA Administering Office will be in contact with the grantee with regard to the refunding of the grant. Any inquiries on refunding, however, should be addressed directly to the appropriate Administering Office.

(c) *Program and funding guidance.* In place of the Letter of Understanding prescribed by OEO Instruction 6710-1, August, 1968, necessary funding guidance required for preparation of plans, programs or budgets, will be communicated at the earliest feasible date to grantees. It is expected that

<sup>1</sup>Individuals, political parties, and for-profit organizations, partnerships and corporations are ineligible for assistance under these Sections.

the funding guidance will be communicated at least six months prior to the end of each grantee's current program year.

(d) *Grantee internal planning, programming and budgeting procedures.*

(1) Grantees are responsible for the development and maintenance of complete documents related to planning, description of work plans, and budgets backup detail. Grantees will have flexibility in developing planning documents but they must address at least the following: (i) Incidence of poverty; (ii) problems and causes of poverty; (iii) assignments of priorities to the solutions of these problems; (iv) goals of the agency for the proposed funding period; (v) approaches to be used; (vi) resources to be mobilized; and (vii) how available public and private resources can be utilized.

(2) A copy of the grantee current plans must be on file with CSA for grantees seeking refunding at least 150 days prior to the end of the program year. Resubmission is required as necessary to justify work program changes, or new funding requests or to document changes to grantee plans. Detailed grantee backup documents for support of submitted work programs and budget detail do not have to be submitted to the Administering Office; but must be available to CSA for review upon request. The document must have clear, concise milestones in order for CSA to measure per-

formance of the grantee and to establish cost performance analysis.

(3) Evidence of approval by the Grantee Board of grantee plans, priorities, proposed programs, and budgeted items, or changes to these plans, programs or budget items, must be specifically annotated in the Minutes to the Board Meeting(s) at which these items are discussed. It is not necessary that such minutes be submitted to CSA as part of the grant application.

The planning document must also provide evidence of participation of the poor in the development and implementation of the plan.

(e) *Field prereview.* (1) In some cases, grantees may be requested by Administering Offices to participate in prefunding conferences dealing with matters related to grantee eligibility to receive CSA funds, grantee planning or work programs, planned or requested funding levels, or matters related to grantee involvement in local community poverty planning, mobilization of local resources, or other such matters deemed by the Administering Office to be essential to the initial funding or continued funding of the program by CSA.

(2) The timing of such conferences will be scheduled to permit prompt grant refundings.

(f) *Required documents—(grantee).* (See chart which follows.)



## REQUIRED DOCUMENTS

| Sections of the<br>act under which<br>funds requested | Applicant                                    | Forms to be submitted prior to formal application <sup>1</sup> |                |                |                |     |                | Forms to be submitted at time of formal application |    |     |     |                 |                          |    |    |
|-------------------------------------------------------|----------------------------------------------|----------------------------------------------------------------|----------------|----------------|----------------|-----|----------------|-----------------------------------------------------|----|-----|-----|-----------------|--------------------------|----|----|
|                                                       |                                              | 424                                                            | 3              | 5              | 393            | 394 | 395            | 424                                                 | 25 | 25a | 419 | 84 <sup>5</sup> | When delegating programs |    |    |
|                                                       |                                              |                                                                |                |                |                |     |                |                                                     |    |     |     |                 | 85                       | 87 | 11 |
| I 221                                                 |                                              |                                                                |                |                |                |     |                |                                                     |    |     |     |                 |                          |    |    |
| A Initial fund                                        | Community action agency.....                 | x                                                              | x              | x              |                | Opt | x              | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
|                                                       | Limited purpose agency (including<br>SEOO's) | x                                                              |                | x <sup>2</sup> | x <sup>3</sup> | x   | x <sup>4</sup> | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
| B Refunding                                           | Community action agency.....                 | x                                                              | x <sup>1</sup> | x <sup>1</sup> |                | Opt | x              | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
|                                                       | Limited purpose agency (including<br>SEOO's) | x                                                              |                | x <sup>1</sup> |                | x   | x <sup>4</sup> | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
| II 222                                                |                                              |                                                                |                |                |                |     |                |                                                     |    |     |     |                 |                          |    |    |
| A Initial funding                                     | Community action agency.....                 | x                                                              |                |                |                | Opt | x <sup>4</sup> | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
|                                                       | Limited purpose agency (including<br>SEOO's) | x                                                              |                | x <sup>2</sup> | x              | Opt | x <sup>4</sup> | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
| B Refunding                                           | Community Action agency.....                 | x                                                              |                |                |                | Opt | x <sup>4</sup> | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
|                                                       | Limited purpose agency (including<br>SEOO's) | x                                                              |                |                |                | Opt | x <sup>4</sup> | x                                                   | x  | x   | x   | x               | x                        | x  | x  |
| III 231                                               | State economic opportunity offices.....      | x                                                              |                |                |                | Opt | x <sup>4</sup> | x                                                   | x  | x   | x   |                 | x                        | x  | x  |

<sup>1</sup>For refundings, submission will be 150 days prior to PYR.<sup>2</sup>Except SEOO's<sup>3</sup>Keep on file<sup>4</sup>Except sec. 1<sup>5</sup>Except Program Account 01

(g) *Additional required documents when grant funds are used as venture capital.* When a grantee proposes to undertake an activity using Title II funds as venture capital, the venture must be reported as an activity on CSA Form 419 of the grant application, for which the appropriate Standards of Effectiveness (§ 1067.4) must be addressed. If the grantee will not operate the venture itself, it shall arrange to sign a contract with the organization which will operate the venture. See § 1063.131 of this chapter for a discussion of the requirements when contracting with an organization to perform a component of the grant work program. In addition, the grantee shall submit the following materials, as appropriate, in support of the Form 419:

(1) Documentation that there will be no substantial negative impact on existing small businesses;

(2) Appropriate feasibility studies and cost analyses;

(3) Certified balance sheets and profit and loss statements for the immediately preceding three years or from the commencement of its operation (whichever period is shorter) if funds are to be used for the acquisition, preservation, or expansion of an existing business venture;

(4) Cash-flow projections and pro forma profit and loss statements and balance sheets estimated on a monthly basis for two years;

(5) Resumes of the management team;

(6) The articles of incorporation and the bylaws of the venture.

(h) *Special CSA requests for grantee documentation.* In accordance with OMB Circular A-110 and FMC 74-7, CSA reserves the right to require additional documentation in any areas of planning, specifications of work programs, or budget details if the grantee has a history of poor performance, is not financially stable, or if its management system does not meet the Uniform Federal Standards promulgated under Part 1050 (6800 series of CSA's directives system).

[42 FR 10689, Feb. 23, 1977, as amended at 42 FR 18402, Apr. 7, 1977; 42 FR 22365, May 3, 1977; 45 FR 39850, June 12, 1980]

#### § 1067.40-4 Amendments.

(a) *Grantee flexibility.* (1) Grantees may make changes in the distribution of money within and between program accounts during the program year for which the money has been granted and certain other changes described below. In order to make some of these changes grantees must have prior permission from the Community Services Administration but they do not need prior permission if the changes are made within the allowed flexibility. (See viii below.) Where prior permission is required, an amendment request must be submitted to the CSA Administering Office as described below. Following are the various types of changes possible:

(i) *Changes in the total program level.* No change may be made by the grantee which changes the total program level. Such a change must be made by a supplemental grant (in the case of an increase) or a deobligation or reprogramming action (in the case of a decrease).

(ii) *Decrease in the level of other than Section 221 Program.* The grantee may not apply any funds for programs authorized under Section 222 or Section 231 to any program except that for which it was granted. If the level of these programs is to be decreased, it should be accomplished by a deobligation action on a CSA Form 314.

(iii) *Increase in the level of other than a Section 221 Program.* The grantee may apply funds for programs authorized under Section 221 to any other CSA funded program run by the grantee, so long as neither work program is changed beyond what is allowed in (viii) below and it is within the flexibility rules. No prior CSA permission is needed for such a change. However, the Administering Office in CSA must be informed of such a change on a CAP Form 25b, Justification of Program Account Amendment.

(iv) *Changes in administering agency funding levels.* In executing contracts, a grantee may change the delegate agency's total funding level from that estimated on the Administering Agency Funding Estimate, CAP Form 85, submitted to the funding

office, *Provided*, That the sum of such changes does not exceed 25 percent of the delegate agency's total funding level (Federal and Non-Federal share) estimated on the CAP Form 85 (or \$150,000 whichever is less). Changes exceeding 25 percent or \$150,000 must have prior written approval from CSA Administering Office.

(v) *Changes in work programs.* A grantee may change the work program without prior CSA permission only if the changes:

(A) Do not constitute a basic change in objective, strategy, implementation plan or activities of the program;

(B) Do not increase or decrease by more than 20 percent the estimated number of participants, trainees or enrollees;

(C) Do not change the program account level more than the flexibility allowed in any one Program Year. (See paragraph (a)(1)(viii) of this section.)

(vi) *Changes in salary and position.* A grantee may change salaries or the number of staff positions, or create new positions without CSA approval, *Provided*, That such changes:

(A) Do not exceed wage comparability standards and grantee salary schedule;

(B) Are in accordance with CSA and grantee personnel policies;

(C) Do not result in work program changes for which CSA approval is required, as outlined in above, and

*Provided*, That CSA has not previously notified the grantee in writing that such a position may not be established. Written CSA approval must be obtained for all other changes in salaries and positions.

(vii) *Changes in the amount of carryover funds assigned and in the new obligational authority approved for a program account.* This form of amendment affects only the manner in which a program account is funded, not its budget or work program and is always initiated by CSA. It may result in a supplemental grant action or reduction of funds.

(viii) *Changes between Section 221 Program Accounts.* (A) Funds may be shifted between Section 221 accounts; from Section 221 accounts to Section 222 accounts subject to the flexibility rules listed below. The Administering

Office must be informed of changes within flexibility within at most 30 days of the change, on a CAP Form 25b marked: "Change within flexibility; information only." Such changes made within flexibility are permitted only if they do not require prior CSA approval for any other reasons, for example, if the work program will be substantially altered (see paragraph (a)(1)(v) of this section). Obviously no funds can be moved into a program account not currently used by the grantee since that would more certainly involve a basic work program change and the move would increase the new account by more than 10 percent.

(B) *Flexibility rules.* (1) No account may be increased or decreased by more than 10 percent of \$100,000, whichever is smaller, without prior CSA approval.

(2) This flexibility (10 percent or \$100,000 whichever is smaller) is the total flexibility to be allowed in any one Program Year without prior CSA approval.

(C) Changes made within flexibility (as well as those made beyond flexibility with CSA permission) must show up immediately on the SF269, Financial Status Report. The Administering Office retains the right to disapprove any changes, even those which would fall within flexibility.

(ix) *Changes between personnel and non-personnel costs.* (A) Grantees may alter the budget submitted by moving funds between personnel and non-personnel categories without prior CSA permission, as long as no work changes outlined in paragraph (a)(1)(v) of this section are involved when the money remains in the same Program Account.

(B) Nothing in the foregoing shall prohibit the Administering Office from allowing the grantee to make changes, via formal amendment procedures, in the Work Program or the distribution of CSA administered funds which exceed the flexibility provisions described above. Also nothing in the foregoing shall prohibit the Regional Office or the funding office within CSA from disapproving changes which would normally be allowed under the flexibility procedures described above, *Providing*, That notice of such a prohibition shall be given to the grantee



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by the funding office at the time that the funds are originally granted.

(2) The procedures by which the grantee requests prior permission for changes are outlined in paragraph (b) of this section.

(3) No change which is made may increase the percentage of administrative costs after changes are made to more than 15 percent of the total program costs. (See OEO Instruction 6807-1, June 17, 1969).

(4) No change which is made may increase the percentage of Federal assistance in the total cost above that indicated on CSA Form 314.

(b) *How to amend a grant.* (1) When a change in an already approved work program is proposed by the grantee which exceeds the scope of those permitted in paragraph (a) of this section, prior approval must be requested from CSA through submission of the following:

(i) CAP Form 25b Justification of Program Account Amendment;

(ii) CAP Form 25, Program Account Budget (if the requested change is related to budget); and/or

(iii) CAP Form 419, Summary of Work Programs and Budget, if there is also a change in the goals, elimination or addition of projects to be conducted, or change in total CSA funding level. Plus

(iv) A Statement of CSA Grant, CSA Form 314, must be executed if the change is in total CSA funding level.

### § 1067.40-5 Where to apply.

Unless otherwise stated in specific program regulations, requests for information and forms, and submission of initial proposals should be addressed to the CSA Regional Office in your area.

### Subpart 1067.41—Program Account Structure (CSA Instruction 6100-1b and 6100-1b CH 1)

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 44 FR 61348, Oct. 25, 1979, unless otherwise noted.

### § 1067.41-1 Applicability.

This rule applies to grants funded under Titles I, II, IV, VII and IX of

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the Economic Opportunity Act of 1964, as amended, when the funds are administered by CSA.

### § 1067.41-2 Policy.

(a) CSA Program Accounts are the units within the financial and programmatic systems of the Agency which record the expenditure of funds and describe the activities that may be conducted under each account.

(b) CSA requires that program accounts listed in Appendices A and B be used on all funding documents (CSA Form 314), work programs (CSA Form 419) and the Project Progress Review Reports (CSA Form 440).

### § 1067.41-3 Description of Program Accounts.

Appendix A to this subpart lists all program accounts by type of program. Appendix B to this subpart includes a brief description of each program account, including the section of the Economic Opportunity Act the account implements.

[43 FR 24842, June 8, 1978]

## APPENDIX A—PROGRAM ACCOUNT CODES

### PROGRAM ACCOUNT CODES

| Program account No. | Subject                              | Description              |
|---------------------|--------------------------------------|--------------------------|
| 01.....             | Local Initiative/CAA Administration. |                          |
| 05.....             | Local Initiative Program.            |                          |
| 02.....             | Youth Sports.....                    | Summer Personnel.        |
| 03.....             | do .....                             | Other.                   |
| 04.....             | do .....                             | Winter Program.          |
| 60.....             | Summer Recreation .....              | Personnel.               |
| 10.....             | do .....                             | Other.                   |
| 06.....             | SOS.....                             | Independent Living.      |
| 07.....             | SOS.....                             | Access.                  |
| 08.....             | SEOO.....                            | Training.                |
| 09.....             | SEOO.....                            | Other.                   |
| 12.....             | Nutrition .....                      | Access.                  |
| 13.....             | do .....                             | Self-Help.               |
| 15.....             | do .....                             | Consumer Education.      |
| 16.....             | do .....                             | Crisis Relief.           |
| 29.....             | do .....                             | Research.                |
| 39.....             | do .....                             | Demonstrations.          |
| 42.....             | do .....                             | T&TA—Seminars.           |
| 43.....             | do .....                             | T&TA—On-Site Assistance. |
| 44.....             | do .....                             | T&TA—Other.              |
| 48.....             | do .....                             | Evaluation.              |
| 18.....             | Migrants and Seasonal Farmworkers.   |                          |
| 21.....             | Energy.....                          | Weatherization.          |

## PROGRAM ACCOUNT CODES—Continued

| Program<br>account No. | Subject                    | Description                                                 |
|------------------------|----------------------------|-------------------------------------------------------------|
| 22.....                | Energy .....               | Crisis Intervention.                                        |
| 23.....                | do .....                   | Consumer<br>Information,<br>Education, Legal<br>Assistance. |
| 25.....                | do .....                   | Alternate Energy<br>Sources.                                |
| 80.....                | do .....                   | Emergency Energy<br>Assistance.                             |
| 50.....                | do .....                   | Research.                                                   |
| 53.....                | do .....                   | Demonstration.                                              |
| 54.....                | do .....                   | T&TA—Seminars.                                              |
| 56.....                | do .....                   | T&TA—On-Site<br>Assistance.                                 |
| 57.....                | do .....                   | T&TA—Other.                                                 |
| 58.....                | do .....                   | Evaluation.                                                 |
| 19.....                | Technical Assistance..     | Grantee<br>Administration.                                  |
| 27.....                | do .....                   | Grantee Program.                                            |
| 28.....                | do .....                   | Other.                                                      |
| 31.....                | Rural Housing .....        | Housing Production.                                         |
| 32.....                | do .....                   | Access to Federal<br>Home Loan<br>Services.                 |
| 33.....                | do .....                   | Training and<br>Technical<br>Assistance.                    |
| 34.....                | do .....                   | Small Town<br>Community<br>Development.                     |
| 35.....                | do .....                   | Housing Consumer<br>Assistance.                             |
| 36.....                | do .....                   | Management<br>Services.                                     |
| 64.....                | Special Assistance.....    |                                                             |
| 63.....                | Economic<br>Development.   | Special Impact.                                             |
| 49.....                | do .....                   | Rural Programs.                                             |
| 51.....                | do .....                   | Rural Development<br>Finance.                               |
| 52.....                | do .....                   | Community<br>Development<br>Finance.                        |
| 61.....                | do .....                   | Training and<br>Technical<br>Assistance.                    |
| 66.....                | do .....                   | Demonstration.                                              |
| 67.....                | do .....                   | Research.                                                   |
| 68.....                | do .....                   | Evaluation.                                                 |
| 69.....                | do .....                   | Planning Grants.                                            |
| 71.....                | Evaluation .....           | Type I.                                                     |
| 73.....                | do .....                   | Type II.                                                    |
| 75.....                | do .....                   | Type III.                                                   |
| 78.....                | do .....                   | Other.                                                      |
| 82.....                | Research .....             |                                                             |
| 84.....                | Demonstration .....        |                                                             |
| 98.....                | Program<br>Administration. |                                                             |

## APPENDIX B—DEFINITIONS OF ACTIVITIES WHICH MAY BE CONDUCTED, SINGLY OR IN COMBINATION UNDER EACH PROGRAM ACCOUNT

## 01. Local Initiative/CAA Administration (221)

Includes support for general administration and management of central staff, facilities, and equipment of the community action agency. Coordination, mobilization of resources, general management, information collection and use, as well as planning, program development, and evaluation activities undertaken by CAAs as part of their overall administrative and management responsibilities are included in this account. Support of the CAA board's functioning should also be included. Administrative overhead costs for delegate agencies or general support functions performed by the CAA for such delegate agencies where these costs are not related to specific programs may be included as appropriate. However, this activity does *not* include administration or management directly linked to specific program activities such as community nutrition activities, etc. Such administrative overhead should be reported under the account designated for that program.

## 02. Youth Sports—Summer Personnel (227)

Includes the personnel costs to operate the national youth sports program during the summer months, June through late August or mid-September. This program provides disadvantaged youths the opportunity for sports skills instruction, sports competition, learning good health practices, and career and educational opportunities. Stipends should not be included in this account.

## 03. Youth Sports—Summer Other (227)

Includes the non-personnel costs to operate the national youth sports program during the summer months, June through late August or mid-September.

## 04. Youth Sports—Winter Program (227)

Includes all costs, both personnel and non-personnel to operate the national youth sports program during the winter months, September through May.

## 05. Local Initiative Program (221)

The basic purpose of community action programs as stated in the Economic Opportunity Act is "to stimulate a better focusing of all available local, State, private, and Federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas, to attain the skills, knowledge, and motiva-

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tions and secure the opportunities needed for them to become fully self-sufficient." This purpose may be accomplished by programs designed and/or selected at the local level to meet specific community needs. They may deal with particular concerns in such areas as housing, manpower, education, health, day care, consumer affairs, economic development, general social services, etc. They may focus on particular target groups such as youth. They may employ some type of neighborhood center(s) as a means of reaching persons and delivering services.

### *06. Senior Opportunity and Services—Independent Living (222(a)(2))*

Includes the personnel costs and non-personnel costs to help maintain independent living style of the Older Poor including the following: Housing Services, Nutrition Services, Home Care Services, Health Services, Elderly Day Care Services, and other services such as Counseling, and Safety Education. Also includes cost of providing jobs to elderly poor, and elderly Community Centers.

### *07. Senior Opportunity and Services—Access (222(a)(2))*

Includes the personnel costs and non-personnel costs to identify and meet the needs of older poor in participation of other Federal, State, and local programs. Specifically includes costs associated with Access/Advocacy Activities for Supplementary Security Income Program and Food Stamp Program. Also includes costs of providing jobs and training to older poor, and transportation to services.

### *08. SEOO—Training (231)*

Includes all costs directly associated with providing training and technical assistance by the SEOOs to communities, state and local agencies and to community action agencies in carrying out the programs under the Economic Opportunity Act.

### *09. SEOO—Other (231)*

Includes other costs incurred by the SEOOs not included as training and technical assistance under account 08.

### *10. Summer Recreation—Other (222(a)(6))*

Includes non-personnel costs associated with the summer recreation program which is aimed at expanding and improving recreational services and activities for the economically disadvantaged youths. (Personnel costs associated with this program are shown under Program Account 60.)

### *12. Nutrition—Access (222(a)(1))*

Includes operating program costs associated with improving the opportunities for low-income people to gain access to, and participation in Federal and non-Federal food and nutrition programs.

### *13. Nutrition—Self-Help (222(a)(1))*

Includes operating program costs associated with projects designed to foster self-sufficiency through the mobilization of financial and community resources. Examples include buying clubs, community gardens, food raising co-ops, community canneries, farmer-to-consumer sales and greenhouse food production.

### *15. Nutrition—Consumer Education (222(a)(1))*

Includes operating program costs associated with improving the ability of low-income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior food and to prepare and preserve these foods in ways that minimize the loss of nutrients.

### *16. Nutrition—Crisis Relief (222(a)(1))*

Includes operating program costs associated with the provision of food vouchers, foodstuffs or funds to purchase food stamps on a temporary or crisis basis. (For additional Program accounts dealing with nutrition see numbers 29, 39, 42, 43, 44 and 48.)

### *18. Migrant and Seasonal Farmworkers (Title IV)*

Includes costs associated with the provision of services to migrant and seasonal farmworkers such as weatherization, transportation, housing, training, technical assistance, etc.

### *19. Training and Technical Assistance—Grantee Administration (230)*

Includes costs associated with providing training and technical assistance to improve and maintain the administrative and managerial capacity of CSA-funded grantees, such as accounting, personnel, property or Board training.

(For additional program accounts dealing with technical assistance see numbers 27 & 28.)

### *21. Energy—Weatherization (222(a)(5))*

Includes costs associated with home repairs and energy saving improvements to minimize heat transfer and improve thermal efficiency of dwellings.



**22. Energy Crisis Intervention (222(a)(5))**

Includes costs associated with intervention to prevent hardship or danger to health, especially the older poor. Includes cost for payment of fuel bills, emergency energy-related repairs, and payments other than home heating payments.

**23. Energy—Consumer Information, Education and Legal Assistance—(222(a)(5))**

Includes costs associated with the dissemination of energy conservation information, conduct of energy conservation educational activities, and the representation of the interests of the poor in public proceedings, for example, energy policy and utility rate structure.

**24. Energy—Transportation (222(a)(5))**

Includes costs associated with efforts to offset the increased costs to the poor of transportation needed for access to essential services and employment.

**25. Energy—Alternate Energy Sources (222(a)(5))**

Includes costs associated with the development and application to energy needs of the poor those technologies that capitalize on non-fossil fuels and renewable energy resources, or make conventional fuels available to the poor at substantially decreased costs and/or at increased energy efficiency. (For additional program accounts dealing with Energy, see numbers 50, 53, 54, 56, 57 and 58.)

**27. Training and Technical Assistance—Grantee Program (230)**

Includes costs associated with the provision of training and technical assistance in specific program areas such as housing, mobilization of resources, etc.

**28. Training and Technical Assistance—Other (230)**

Includes costs associated with training and technical assistance which does not relate specifically to grantee administration or grantee program areas.

**29. Nutrition—Research (222(a)(1))**

Includes costs associated with the development of new knowledge about hunger and malnutrition among the poor and/or ways to deal with their problems approved under the authority of Section 222(a)(1) of the EOA.

**31. Rural Housing—Housing Production (222(a)(4)) and (232)**

Includes costs associated with the repair and rehabilitation of housing for poor families, and development of housing factory delivery systems for building low cost housing.

Also includes costs associated with removing architectural barriers from the homes of low-income disabled individuals.

**32. Rural Housing Access to Federal Home Loan Services (222(a)(4)) and (232)**

Includes costs associated with developing methods for full participation of the poor in Federal Home Loan, grant and subsidies programs.

**33. Rural Housing Training and Technical Assistance (222(a)(4)) and (232)**

Includes costs associated with area and State wide housing development corporations and other housing grantees in providing training and technical assistance, to CAAs and single purpose housing grantees.

**34. Rural Housing—Small Town Community Development (222(a)(4)) and (232)**

Includes costs associated with providing training and technical assistance to assist officials in small towns, with large percentage of poor, to implement Community Development Programs that improve housing conditions of the poor.

**35. Rural Housing—Housing Consumer Assistance (222(a)(4)) and (232)**

Includes costs associated with providing assistance for activities such as tenant organizing, fair housing assistance to poor families and groups, home ownership and default counseling, homesteading as well as advocacy and legal services for individuals and families.

**36. Rural Housing—Management Services (222(a)(4)) and (232)**

Includes costs associated with providing management services to assist grantees in the acquisition and maintenance of Default Housing.

**39. Nutrition—Demonstrations (222(a)(1))**

Includes costs associated with experimental, pilot or demonstration projects which test new or improved approaches to combating the problems of hunger and malnutrition.

**42. Nutrition—T&TA Seminars (222(a)(1))**

Includes costs associated with holding nutrition related T&TA seminars for persons from two or more agencies. Such seminars should help grantees plan, conduct and/or evaluate nutrition programs.

**43. Nutrition—T&TA On Site Assistance (222(a)(1))**

Includes the cost of providing nutrition related T&TA services to specific grantee

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personnel at the grantee's location. Such services should help a specific grantee plan, conduct and/or evaluate nutrition programs.

### 44. Nutrition—T&TA Other (222(a)(1))

Includes any costs of a T&TA activity related to nutrition which is not classified as seminar or on-site assistance in program accounts 42 and 43.

### 48. Nutrition—Evaluation (222(a)(1))

Includes costs associated with evaluation of nutrition projects approved under the authority of Section 222(a)(1) of the EOA. Does not include costs for grantee's self-evaluation.

### 49. Economic Development—Rural Programs (Title VII)

Includes costs associated with meeting the special economic needs of rural communities and areas pursuant to Title VII, Part B of the EOA.

### 50. Energy—Research (222(a)(5))

Includes costs of research related to energy type projects approved under the authority of Section 222(a)(5) of the EOA.

### 51. Economic Development—Rural Development Finance (Title VII, Part C)

Includes costs associated with the development, testing and operation of rural financial support mechanisms in conjunction with loans from the Rural Development Loan Fund.

### 52. Economic Development—Community Development Finance (Title VII, Part C)

Includes costs associated with the development, testing and operation of community financial support mechanisms in conjunction with loans from the Community Development Loan Fund.

### 53. Energy—Demonstrations (222(a)(5))

Includes costs associated with experimental, pilot or demonstration projects which test new or approved approaches to solving the energy problems of the poor.

### 54. Energy—T&TA Seminars (222(a)(5))

Includes costs associated with holding energy related T&TA seminars for persons from two or more grantees. Such seminars should help grantees plan, conduct and/or evaluate energy programs.

### 56. Energy—T&TA On Site Assistance (222(a)(5))

Includes the costs of providing energy-related T&TA services to specific grantee personnel at the grantee's location. Such serv-

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ices should help a specific grantee plan, conduct and/or access energy projects.

### 57. Energy—T&TA Other (222(a)(5))

Includes any costs of a T&TA nature related to energy which is not classified as services or on-site assistance in program accounts 54 and 56.

### 58. Energy—Evaluation (222(a)(5))

Includes costs associated with evaluation of energy projects approved under the authority of Section 222(a)(5) of the EOA.

### 60. Summer Recreation—Personnel (222(a)(6))

Includes all personnel costs associated with the summer recreation program which is aimed at expanding and improving recreational services and activities for the economically disadvantaged youths. (Non-personnel costs associated with this program are shown under Program Account 10.)

### 61. Economic Development—Training and Technical Assistance (Title VII, Part D)

Includes training and technical assistance costs related to economic development projects approved under the authority of Title VII, Part D of the EOA.

### 63. Economic Development—Special Impact (Title VII, Part A)

Includes costs associated with community development corporation projects approved under the authority of Title VII, Part A of the EOA.

### 64. Special Assistance (234)

Includes costs associated with projects serving groups of low income individuals who are not being effectively served by other Title II programs.

### 66. Economic Development—Demonstration (Title VII, Part D)

Includes costs associated with pilot and demonstration activities approved under the authority of Title VII, Part D of the EOA.

### 67. Economic Development—Research (Title VII, Part D)

Includes costs associated with research activities approved under the authority of Title VII, Part D of the EOA.

### 68. Economic Development—Evaluation (Title VII, Part D)

Includes costs associated with evaluation activities approved under the authority of Title VII, Part D of the EOA.

## Chapter X—Community Services Administration

§ 1067.42-3

### 69. *Economic Development—Planning Grants (Title VII, Part D)*

Includes costs associated with economic development planning grants approved under the authority of Title VII, Part D of the EOA.

### 71. *Evaluation—Type I (Title IX)*

Includes costs associated with national impact evaluation strategies approved under the authority of Title IX.

### 73. *Evaluation—Type II (Title IX)*

Includes costs associated with determining the relative effects of different program strategies, intervention techniques and administrative processes employed to implement a national program approved under the authority of Title IX.

### 75. *Evaluation—Type III (Title IX)*

Includes costs associated with assessing the effectiveness and efficiency of individual grantees and projects.

### 78. *Evaluation—Other (Title IX)*

Includes costs associated with assessment projects not included under program accounts 71, 73, and 75. Examples might include short-term studies that respond to policy-related questions.

### 80. *Energy—Emergency Energy Assistance (222(a)(5))*

Includes costs associated with a special program to provide assistance to low-income households facing a crisis as a result of the rising cost of energy and severe weather conditions by paying fuel/utility bills, providing lines of credit, or providing services such as blankets, clothing, etc.

### 82. *Research (Title I) and (232)*

Includes costs associated with basic research and related evaluation conducted to provide meaningful information for formulating new programs and policies affecting the poverty population in program areas not included elsewhere. Specifically excluded are nutrition (29, 39, 48) energy (50, 53, 58) rural housing (31, 32, 33, 34, 35, 36) economic development (67, 68) and Title IX (71, 73, 75, 78).

### 84. *Demonstration (232)*

Includes costs associated with pilot or demonstration projects designed to test or assist in the development of new approaches or methods which will aid CSA's poverty population.

### 98. *Program Administration*

Includes costs incurred by Federal employees for the overall direction, manage-

ment, coordination and support of all CSA programs and related anti-poverty programs of other Federal, State and local agencies. This is not a grantee activity.

## Subpart 1067.42—Establishing and Maintaining Program Accounts (CSA Instruction 6806-01)

SOURCE: 44 FR 56558, Oct. 1, 1979, unless otherwise noted.

### § 1067.42-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by Community Services Administration.

### § 1067.42-2 Effective date.

May 10, 1971 (CSA Instruction 6806-01)

### § 1067.42-3 Establishing and maintaining program accounts.

(a) Each grantee shall maintain separate accounting records for each grant. The grantee shall establish a separate bank account for community action program funds, but need not establish a separate bank account for each grant, provided all transactions are clearly identified by grant in the accounting records.

(b) The accounting records shall include all receipts that occur during the grant period, including Federal grants, non-Federal contributions in cash and in-kind, interest earned, and any income from fees charged to program beneficiaries. The financial records shall also include all expenditures from program funds; however, it is not necessary, and in many cases it may not be feasible, to distribute expenditures between Federal and non-Federal contributions.

(c) CSA recognizes that the accounting system utilized in grantee organizations will vary from a pure cash receipt and expenditure system to a very extensive accrual system. CSA will not dictate the type and format of the system to be used, since the interest of the Federal Government is satisfied if a system is established which is adequate to account for program funds,



which provides accurate and current information relating to program progress, and which may be audited without undo difficulty.

(d) Such a system must meet the following criteria:

(1) The accounting records shall provide the information needed to identify adequately the receipt and expenditure of all program funds separately for each grant. Expenditures shall be recorded by the component project and budget cost categories shown in the approved budget (CSA Form 325).

(2) Each entry in the accounting records shall refer to the documentation which supports the entry and the documentation shall be filed in such a way that it can be readily located.

(3) The accounting records shall provide accurate and current financial reporting information.

(4) The accounting system shall possess an adequate means of internal control to safeguard the assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed management policies.

(e) It is permissible for the grantee to maintain the record of non-Federal contributions in its regular accounts, provided a complete series of reference memoranda or a summary list of non-Federal contributions is incorporated into the accounts quarterly.

**Subpart 1067.43—Accounting for Delegated or Contracted Activities (CSA Instruction 6806-04)**

SOURCE: 44 FR 56558, Oct. 1, 1979, unless otherwise noted.

**§ 1067.43-1 Applicability.**

This subpart applies to all grantees financially assisted under Titles II, IV, VII, of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

**§ 1067.43-2 Effective date.**

May 10, 1971 (CSA Instruction 6806-04).

**§ 1067.43-3 Accounting for delegated or contracted activities.**

(a) In every case where the conduct of all or part of the component is delegated to another agency by the grantee, the grantee is held responsible for performance of the program, including proper accounting for expenditure of funds. The intention to make such a delegation must be set forth in the approved application for the grant or be subsequently approved by CSA, prior to the actual delegation.

(b) The grantee organization shall require that fiscal records be kept by the delegate agencies with which it contracts in accordance with the following guidelines:

(1) If the delegate agency is a public body, the grantee shall stipulate that program funds be disbursed through the chief financial officer of the public body, make certain that these financial instructions are known to the chief financial officer, and ensure that an appropriate reporting system is established so that the grantee can meet its obligation to CSA. Inclusion of the program expenditures of the delegate agency in the regular audit program of any public body which becomes a delegate agency should also be assured.

(2) Where the delegate agency is a private organization, the grantee may pursue one of the following courses in order to assure proper fiscal accountability:

(i) Require appropriate certification that the accounting system of the delegate agency is adequate to meet the requirements of the contract.

(ii) Finance, as part of the contract, adequate accounting assistance commensurate with the size and complexity of the contract. OR

(iii) Provide on the grantee's staff, on a full, part-time, or consultant basis as required, qualified persons to consult with the delegate agencies, keep essential accounts, perform such audits as are deemed necessary, and consolidate and prepare appropriate reports to CSA. Grantees dealing with small private organizations as delegate agencies may find it more economical and desirable to use this approach than to attempt to require the delegate agency to hire professional help

and establish its own accounting system.

(3) In the case of a contract or agreement with an individual, the service to be performed is the accountable item. No financial records are required on the part of the person performing the service unless it is performed on a cost reimbursable basis, in which case the grantee shall require appropriate vouchers to be submitted.

### **PART 1068—GRANTEE FINANCIAL MANAGEMENT**

#### **Subpart 1068.6—Grantee Compliance With IRS Requirements for Withheld Federal Income and Social Security Taxes (CSA Instruction 6810-1)**

##### **Sec.**

- 1068.6-1 Applicability of this subpart.
- 1068.6-2 Purpose.
- 1068.6-3 Policy.
- 1068.6-4 General.

##### **APPENDIX A**

#### **Subpart—Non-Federal-Share Requirements for Title II, Sections 221, 222 (a), and 231 Programs**

- 1068.20-1 Applicability.
- 1068.20-2 Non-Federal-share requirements.
- 1068.20-3 Waivers of non-Federal share requirements and criteria.
- 1068.20-4 Pooling of non-Federal share.
- 1068.20-5 Maintenance of effort.

##### **APPENDIX A APPENDIX B APPENDIX C**

#### **Subpart 1068.30—Membership Dues and Related Expenses Paid to Professional Organizations (CSA Instruction 6803-6)**

- 1068.30-1 Applicability.
- 1068.30-2 Policy.
- 1068.30-3 Criteria for review and approval.

#### **Subpart 1068.42—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801-1 and 6801-1 Ch 1)**

- 1068.42-1 Applicability.
- 1068.42-2 Effective date.
- 1068.42-3 Definitions.
- 1068.42-4 Policy.
- 1068.42-5 Accounting system certification.
- 1068.42-6 Auditor selection and responsibilities.
- 1068.42-7 Required preliminary audit survey.
- 1068.42-8 Required annual audits.
- 1068.42-9 Federal, State and local audits.
- 1068.42-10 Maintenance of records.

#### **APPENDIX A TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING**

#### **APPENDIX B TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING**

#### **APPENDIX C TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING**

#### **Subpart 1068.43—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801-1 Change 2)**

##### **Sec.**

- 1068.43-1 Applicability.
- 1068.43-2 Effective date.
- 1068.43-3 Purpose.
- 1068.43-4 Definition.
- 1068.43-5 Policy.
- 1068.43-6 Grantees with a predetermined fiscal year.
- 1068.43-7 Change to CSA guidance.

#### **Subpart 1068.50—Cost Principles**

- 1068.50-1 Applicability.
- 1068.50-2 Purpose.
- 1068.50-3 Implementation date.
- 1068.50-4 Supersession.

#### **APPENDIX TO SUBPART 1068.50—OMB CIRCULAR A-122, COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS**

#### **Subpart 1068.6—Grantee Compliance With IRS Requirement for Withheld Federal Income and Social Security Taxes (CSA Instruction 6810-1)**

**AUTHORITY:** Sec. 628, 90 Stat. 806 (42 U.S.C. 2971(g)).

**SOURCE:** 36 FR 23065, Dec. 3, 1971, unless otherwise noted.

##### **§ 1068.6-1 Applicability of this subpart.**

This subpart applies to all grantees receiving financial assistance under the Economic Opportunity Act of 1964, as amended, when the assistance is administered by OEO.

##### **§ 1068.6-2 Purpose.**

The purpose of this subpart is to state the necessity for strict compliance with the provisions of Internal Revenue Service regulations for withholding Federal income and social security taxes from employees' wages, and the timely and proper reporting and remittance of these withheld taxes to the appropriate IRS District Director.

§ 1068.6-3 Policy.

(a) Any grantee receiving financial assistance under the Economic Opportunity Act of 1964 will comply with the applicable sections of the Federal tax code by withholding taxes, filing the appropriate tax returns and remitting taxes to the designated Internal Revenue Service District Office.

(b) Failure to comply with IRS requirements for reporting and remitting the withheld taxes will result in IRS notifying OEO to suspend further payments due the grantee and to refuse to refund, make supplements, or provide any other assistance, as prescribed in section 115 of the 1969 amendments to the Economic Opportunity Act of 1964, until adequate provisions have been made to satisfy tax obligations.

(c) The use of funds withheld from employee's wages for taxes, for program purposes, even with the intent to later restore such funds from another source, is improper and is specifically prohibited.

(d) Section 115 of the Economic Opportunity Act of 1964, as amended, provides:

Upon notice from the Secretary of the Treasury or his delegate that any person otherwise entitled to receive a payment made pursuant to a grant, contract, agreement, loan or other assistance made or entered into under the Economic Opportunity Act of 1964 is delinquent in paying or depositing (1) the taxes imposed on such person under chapters 21 and 23 of the Internal Revenue Code of 1954, or (2) the taxes deducted and withheld by such person under chapters 21 and 24 of such Code, the Director of the Office of Economic Opportunity shall suspend such portion of such payment due to such person, which, if possible, is sufficient to satisfy such delinquency, and shall not make nor enter into any new grant, contract, agreement, loan or other assistance under such Act with such person until the Secretary of the Treasury or his delegate has notified him that such person is no longer delinquent in paying or depositing such tax or the Director of the Office of Economic Opportunity determines that adequate provision has been made for such payment \* \* \*

§ 1068.6-4 General.

(a) All OEO-funded organizations are required by IRS laws and regulations to withhold income taxes from

their employees' wages. This includes those religious, educational or charitable organizations which are exempt from Federal income taxes by IRS ruling under section 501(c)(3) of the Internal Revenue Code.

(1) All grantees, except those who qualify as a 501(c)(3) organization, must provide mandatory social security coverage for their employees. These grantees are liable for taxes imposed under the Federal Insurance Contributions Act. Those agencies who qualify as 501(c)(3) organizations, are exempt from social security taxes (Federal Insurance Contributions Act) unless they elect to provide social security coverage for their employees; however, if they do waive their exemption, they must also deduct the employees' share of FICA taxes from their wages.

(2) Grantees should consult their local IRS Office in order to determine their particular responsibilities in regard to each of these tax liabilities.

(b) All OEO grantees must, if they have not already done so, obtain Form SS-4, "Application for Employer Identification Number," and IRS Publication No. 15, Circular E, "Employer's Tax Guide," from the nearest IRS District Office.

(c) Form SS-4 is to be completed by these organizations with the required information and returned to the appropriate IRS Office. The IRS Office will assign an "Employer Identification Number" and furnish the organization with reporting and deposit forms preinscribed with the address and identification number. The identification number is used by IRS to identify the organization's tax accounts and must be recorded on all reports, remittances and related correspondence.

(d) Circular E provides the detailed definitions, instructions, guidelines, and sample forms related to obtaining an Employer Identification Number, tables for computing tax amounts to be withheld from employees' wages, and depositing and reporting Federal income and social security taxes. Attached to this subpart are the essential procedures and requirements contained in Circular E.



(e) To avoid delay and insure timely processing of grant applications, all applicants, for OEO funds must record their "Employee Identification Number" on the following OEO forms:

CAP Form 3—Community Action Basic Information (section I, Item 6).

CAP Form 87—Delegate Agency Basic Information (section II, Item 6).

OEO Form 303 (Test)—Applicant Agency Basic Information (section I, Item 6).

The forms referred to in § 1068.8-4(e) are available through normal OEO Supply channels.

OEO Distribution Center, 5458 Third Street NE., Washington, DC 20011.

#### APPENDIX A

##### PROCEDURES FOR OBTAINING EMPLOYER IDENTIFICATION NUMBER AND DEPOSITING AND REPORTING WITHHELD FEDERAL INCOME AND SOCIAL SECURITY TAXES

**Employer identification number.** Each employer shall obtain Form SS-4, "Application for Employer Identification Number," and Internal Revenue Service Circular E, "Employer's Tax Guide." The form and tax guide may be obtained from any office of the Internal Revenue Service or Social Security Administration. Instructions for completion are on the reverse side of Form SS-4. Upon completion, the forms must be filed with the District Director of Internal Revenue with whom Federal tax returns are filed. A copy of the form will be returned with the assigned "Employer Identification Number" recorded thereon. This identification number should be shown on all forms and attachments, and in all correspondence with the Internal Revenue Service and the Social Security Administration.

**Payment of withheld income and social security taxes.** In most cases, the employer is responsible not only for the employer's contribution of social security tax, but also for the employee tax and the income tax required to be withheld from the employee's wages. The amount of tax withheld by the employer becomes a special fund in trust for the United States. The employer is relieved of liability to any other person for such amount.

In general, the withheld income and social security taxes must be deposited with an authorized commercial bank depository or a Federal Reserve Bank with a Federal Tax Deposit Form 501. Deposits are required to be made as follows.

(a) Every employer who holds more than \$100 in social security and withheld income taxes (reduced by any deposits for the quarter) must deposit these taxes on or before

the last day of the month following the close of the quarter.

(b) Monthly deposits are required if the total of the social security and withheld income taxes is more than \$100 for that month.

(c) Any employer who has withheld more than \$2,500 of social security and withheld income taxes for any month of a calendar quarter must make semimonthly deposits of the taxes for the next quarter regardless of the amount.

| Quarters                         | Quarter ending | Due date |
|----------------------------------|----------------|----------|
| January, February, March.....    | Mar. 31        | Apr. 30  |
| April, May, June.....            | June 30        | July 31  |
| July, August, September.....     | Sept. 30       | Oct. 31  |
| October, November, December..... | Dec. 31        | Jan. 31  |

Form 941 must be filed with the Internal Revenue Service Center for the IRS region in which the grantee or delegate agency is located as prescribed in Circular E. No more than one calendar quarter may be reported on one Form 941. Instructions for preparation of Form 941 are included on its reverse side. Preaddressed forms will be furnished for use by the grantee or delegate agency. Taxes not required to be deposited must be remitted with the return, or at the option of the employer, deposited on Form 501.

**Penalties.** Both criminal and civil penalties are provided for the willful failure to make returns (Form 941) and payments (Form 501) of tax, or for willfully filing false or fraudulent returns (Form 941).

A penalty is provided for failure, without reasonable cause, to make timely required deposits of taxes.

**How to make deposits of taxes.** Preinscribed Forms 501 will automatically be furnished the employer after he applies for an identification number.

The employer shall fill in a preinscribed Form 501, "Federal Tax Deposit," in accordance with the instructions printed on the reverse side of that form. Each Form 501, and a single remittance covering the amount of the taxes to be deposited, should be sent or taken to any commercial bank qualified as a depository for Federal taxes, or to a Federal Reserve Bank. The names of authorized commercial bank depositories may be ascertained at a local bank or Federal Reserve Bank. Checks or money orders covering deposits should be made payable to the bank to which the completed Form 501 is taken or sent.

**Quarterly return of income tax withheld and social security taxes.** Every grantee or delegate agency required to withhold Federal income and social security taxes from wages must file a quarterly return on Form

941, "Employer's Quarterly Federal Tax Return". The dates on which the return and tax payments are due, are as follows:

*Records to be kept.* Every employer subject to the employment taxes described in this attachment is required to keep all records pertinent to these taxes available for inspection by officers of the Internal Revenue Service if the need should arise. Such records should be kept for a period of at least 4 years after the date the related tax becomes due, or the date the tax is paid, whichever is later.

**Subpart—Non-Federal-Share Requirements for Title II, Sections 221, 222 (a), and 231 Programs**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 43 FR 52438, Nov. 9, 1979, unless otherwise noted.

**§ 1068.20-1 Applicability.**

This subpart is applicable to grants funded under title II, sections 221, 222(a), and 231 of the Economic Opportunity Act as amended if the assistance is administered by the Community services Administration.

**§ 1068.20-2 Non-Federal-share requirements.**

(a) Legislative requirement (secs. 221 and 222(a)). All grants funded under sections 221 and 222(a) of the EOA which become effective on or after October 1, 1978 carry a requirement for a 20 percent matching share. for ongoing grants, the 80/20 matching requirement is applicable to that portion of the time remaining in the grant year. (See appendix A, re procedures for prorating the non-Federal share for grants to which both the higher rate and the new requirements apply.)

(b) Administrative requirement (231). Beginning October 1, 1979 all grants funded under Section 231 of the Economic Opportunity Act carry a 50% non-Federal share requirement.

[43 FR 52438, Nov. 9, 1978, as amended at 44 FR 47935, Aug. 16, 1979]

**§ 1068.20-3 Waivers of non-Federal share requirements and criteria.**

Section 225(c) of the EOA as amended also provides that, "The Director may approve assistance in excess of

such percentages if he determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purpose of (title II)." Following are notices of waivers for certain programs, communities, and activities. Publication of the following, however, does not preclude the Director from developing additional waiver criteria for other circumstances; however, in the event that such criteria are developed they will be published in the **FEDERAL REGISTER**.

(a) *Program waivers.* (1) *Community Food and Nutrition* (222(a)(1)). Because the requirement of non-Federal share could pose serious obstacles to meeting program objectives on an emergency basis the non-Federal share requirements have been waived for this program since its inception and continue to be waived. The waiver is automatic and does not require a request for waiver.

(2) *Emergency energy conservation program—Crisis intervention* (222(a)(5)). Non-Federal share requirements are waived for grants made under section 222(a)(5) for intervention activities to prevent hardship or danger to health due to the emergency nature of these grants. Components include grants, loans, fuel voucher or stamp programs, or payment guarantees; mediation with utility companies or fuel suppliers, warm clothing, and blankets. The waiver is automatic and does not require a request for waiver from grant applicants.

(3) *Emergency energy conservation program—Program Support* (222(a)(5)). Eligible activities under Program Support (training and technical assistance, research and demonstration, and evaluation) are not the type that can generate non-Federal share since they are process-oriented rather than operational in nature. Therefore, the non-Federal-share requirement is automatically waived for Program Support projects funded under section 222(a)(5).

(4) *SEOs (Section 231).* (i) It is recognized that there are circumstances beyond an SEO's control which inhibit its ability to raise the required non-Federal share or where the imposition of a 50% matching requirement

would seriously affect the SEOO's ability to operate non-CSA-funded anti-poverty programs. Therefore, requests for waivers will be considered based on the following criteria:

(A) The State has not been able to appropriate matching funds due to the timing of the legislative calendar;

(B) substantial progress has been made toward assuring an appropriation for purposes of providing the required match;

(C) through the direct efforts of the SEOO there has been substantial state anti-poverty and social services activity; and/or

(D) failure to provide waiver will result in the loss of essential non-CSA-funded social services and antipoverty programs operated by the SEOO.

(ii) The amount of non-Federal share waived under the above criteria may not result in a matching requirement which, in absolute dollar value (cash and/or in kind), is less than that which was required under the terms of the grantee's last grant which carried a 20% matching requirement.

(iii) A request for waiver must be submitted in writing to the appropriate CSA Regional Office along with documentation to support the grantee's contention that at least one of the conditions cited in (A) through (D) exists.

(b) *Activity waivers.* (1) *Crisis relief (natural disasters).* One of the major objectives of non-Federal share is to provide local resources for and to encourage involvement at the local level in the operating programs of CSA grantees. However, to require non-Federal share contributions for grants awarded to provide crisis intervention assistance to communities affected by natural disasters over which there is no control, for example floods and tornadoes, is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his/her authority under section 225(c) of the Economic Opportunity Act of 1964 as amended by waiving the non-Federal share for grants to provide crisis relief as a result of a natural disaster. The waiver is automatic and does not require a request for waiver from the grant applicant.

(2) *Phaseout grants.* (i) In certain instances and under defined procedures, CSA terminates and closes out grantee operations. As necessary, CSA may award additional Federal funds when there is a grantee termination and phaseout action and there are not sufficient funds on hand to meet liabilities of the grantee and/or its delegate agencies to third parties when such costs result from the phaseout activities. To require non-Federal share contributions for grants awarded to meet the legal obligations of grantees is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his/her authority under section 225(c) of the Economic Opportunity Act of 1964 as amended by waiving the non-Federal requirement for a phaseout grant as a result of termination. The grant, however, must include no operational elements, all previously required portions of the work program must have been completed, and there must be documented evidence that the grantee has insufficient funds to meet those liabilities which are costs of phasing out.

(ii) The grantee must formally request a waiver and the above conditions must exist or be satisfied by the grantee prior to consideration of a waiver under this subsection.

(c) *Communities.* (1) *Low-income counties.* (i) A long-standing objective of CSA's exemption policy has been to assure that the poorest counties in the Nation are able to participate in community action programs despite their lack of local economic resources to match Federal grant funds. These exemptions continue.

(ii) CSA's waiver criteria in this instance reflects a percentage of the population below the poverty threshold.

Counties with 35 percent or more of families poor<sup>1</sup> are eligible for waivers of a portion or all of the required NFS. In addition those counties with at least 24.5 percent of families poor<sup>1</sup> may request a waiver of up to 50 percent of the required NFS. Appendices

<sup>1</sup> 1970 Census of Housing and Population, PC-1(c) series as shown in the 1972 County-City Data Book.



B and C provide complete listings of the eligible counties.

(iii) A request for a waiver must be in the form of a letter accompanying application for a grant and shall state (A) the amount of the non-Federal share which the community can provide, and (B) that the applicant has made a reasonable effort to raise more non-Federal share and has been unsuccessful. CSA may require that additional evidence be submitted in support of these representations.

(iv) To compute NFS for a multi-county CAA where one or more counties qualify for waivers, use the following procedure:

(A) Determine each county's NFS on the basis of the relative proportion of total target population in the counties.

*Example:* A three county CAA with a target population of 100,000 whose Federal assistance requiring NFS is \$500,000:

| County      | Population | Proportion of NFS (percent) | NFS at 20 percent |
|-------------|------------|-----------------------------|-------------------|
| A .....     | 20,000     | 20                          | \$25,000          |
| B .....     | 30,000     | 30                          | 37,500            |
| C .....     | 50,000     | 50                          | 62,500            |
| Total ..... | 100,000    | 100                         | 125,000           |

(B) If one or more counties are eligible for waiver the NFS is first computed as noted above. If county A qualifies for and receives a waiver of all NFS, the NFS contribution required of that CAA would be reduced by \$25,000.

(C) If county C qualifies for a partial waiver, reduce the \$62,500 by the *approved percentage* of NFS waived and reduce the total NFS requirement of that CAA by the resulting dollar figure.

(2) *Indian Reservations, Puerto Rico, the Trust Territories, and the Virgin Islands.* (i) Because of the high incidences of poverty on Indian reservations and in Puerto Rico, the Trust Territories, and the Virgin Islands, any federally recognized Indian tribe on a reservation, or any organization or agency in these areas applying for funds under sections 221, 222(a), and 231 of the Economic Opportunity Act is eligible for a waiver of a portion or

all of the non-Federal share requirement.

(ii) A request for waiver must be in the form of a letter accompanying each request for *program year* funding and should be addressed to the community services office which administers grants for that particular area. The letter shall state (A) the period for which the waiver is being requested, (B) the amount of the non-Federal share which the community can provide, and (C) that the applicant has made a reasonable effort to raise the required amount of the non-Federal share and has been unsuccessful. CSA may require that additional evidence be submitted in support of these representations.

(3) *Farmworker-governed organizations (grants under section 222(a)(5), emergency energy conservation services program only).* (i) Because of the relatively recent establishment of most farmworker-governed organizations, and the lack of opportunity to develop relationships with private sector, local governments, and other sources of non-Federal share contributions, CSA has determined requirements of a non-Federal share for grants made to farmworker-governed organizations under section 222(a)(5) of the act would be unreasonable.

(ii) Therefore, the non-Federal share requirement is waived for grants made under section 222(a)(5) of the Economic Opportunity Act as amended to farmworker-governed organizations.

(4) *Communities faced with severe economic problems.* The provisions of § 1068.22 (CSA instructions 6802-5a and s 6802-5a, CH1) apply only to those grants or portions of grants whose non-Federal share requirement exceeds 20 percent.

[43 FR 52438, Nov. 9, 1978, as amended at 44 FR 47935, Aug. 16, 1979]

#### § 1068.20-4 Pooling of non-Federal share.

(a) CSA permits pooling of non-Federal share between exempt and nonexempt counties served by the same CAA.

(b) Pooling of excess non-Federal share among those program accounts funded by the Community Services Administration during a single pro-

gram year also is acceptable. (NOTE.—This does not allow pooling with other programs authorized under the Economic Opportunity Act which are administered by other Federal agencies, e.g., title V, Headstart and Follow Through, administered by HEW.)

#### § 1068.20-5 Maintenance of effort.

(a) Section 225(d) states that no program shall be approved for assistance under sections 221 and 222(a) unless the Director satisfies himself/herself (1) that the services to be provided under such program will be in addition to, and not in substitution for, services previously provided without Federal assistance and (2) that funds or other resources devoted to programs designed to meet the needs of the poor within the community will not be diminished in order to provide any contributions required under section 225(c).

(b) The principal intent of this requirement is to insure that the ongoing level of antipoverty effort in the community is increased. Federal assistance is intended to supplement and raise existing levels of local support for action against poverty, not to replace it.

(c) To insure that the requirements of section 225(d) are satisfied, both of the following conditions must be met:

(1) The applicant must demonstrate that the proposed expenditures, including any amounts claimed as non-Federal share, will represent a net increase in the expenditures from non-Federal sources for similar activities for this purpose. The base period to be used for comparison is fiscal year 1975.

(2) In addition, the applicant shall assure CSA that the prior level of expenditures or contributions within the community which are concerned with poverty will be maintained in the sense that funds have not been and will not be diverted from other activities focusing on the needs of the poor so as to finance the community action programs.

(d) The requirements of section 225(d) apply only with respect to program accounts funded in whole or in part under sections 221 and 222(a) of the act, and not to activities which are financed under other sections.

### APPENDIX A

#### HOW TO COMPUTE NON-FEDERAL SHARE FOR GRANTS CARRYING BOTH A 20-PERCENT NON-FEDERAL SHARE REQUIREMENT AND A HIGHER RATE

Following are tables and a formula which may be used in computing NFS for grants carrying both a 20-percent NFS requirement and a higher rate.

(NOTE: Since Federal funds are not affected by the change in NFS requirement, forms 314 will not be amended.)

#### ACTION

| Months <sup>1</sup> elapsed from effective date of grant to October 1, 1978 | Multiply Federal share by figures in appropriate column to determine new non-Federal share (in dollars) |                                          |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|------------------------------------------|
|                                                                             | Grant currently carries 40 percent NFS requirement                                                      | Grant carries 30 percent NFS requirement |
| 1.....                                                                      | 0.28472                                                                                                 | 0.26488                                  |
| 2.....                                                                      | .31944                                                                                                  | .27976                                   |
| 3.....                                                                      | .35416                                                                                                  | .29464                                   |
| 4.....                                                                      | .38889                                                                                                  | .30952                                   |
| 5.....                                                                      | .42361                                                                                                  | .32440                                   |
| 6.....                                                                      | .45833                                                                                                  | .33928                                   |
| 7.....                                                                      | .49305                                                                                                  | .35416                                   |
| 8.....                                                                      | .52778                                                                                                  | .36904                                   |
| 9.....                                                                      | .56250                                                                                                  | .38392                                   |
| 10.....                                                                     | .59722                                                                                                  | .39880                                   |
| 11.....                                                                     | .63194                                                                                                  | .41368                                   |

<sup>1</sup> Do not count partial months.

You may call the Information and Management Systems staff, CSA Headquarters, 202-254-5300, for assistance in determining NFS for grants carrying NFS requirements other than those indicated above.

### APPENDIX B—COMMUNITY SERVICES ADMINISTRATION, COUNTIES WITH 35 PERCENT OR MORE LOW-INCOME FAMILIES [1970]

| State and county           | Percent of families below low income level |
|----------------------------|--------------------------------------------|
| <b>PHILADELPHIA REGION</b> |                                            |
| Virginia:                  |                                            |
| Lee.....                   | 39.7                                       |
| West Virginia:             |                                            |
| Braxton.....               | 37.4                                       |
| Calhoun.....               | 37.1                                       |
| Clay.....                  | 39.6                                       |
| Gilmer.....                | 37.0                                       |
| Lincoln.....               | 38.0                                       |
| Mingo.....                 | 36.5                                       |
| Webster.....               | 39.1                                       |

| State and county      | Percent of families below low income level | State and county         | Percent of families below low income level |
|-----------------------|--------------------------------------------|--------------------------|--------------------------------------------|
| <b>ATLANTA REGION</b> |                                            |                          |                                            |
| Alabama:              |                                            | Wolfe.....               | 59.0                                       |
| Barbour.....          | 36.0                                       | Mississippi:             |                                            |
| Bullock.....          | 46.6                                       | Amite.....               | 42.1                                       |
| Choctaw.....          | 35.5                                       | Attala.....              | 37.3                                       |
| Conecuh.....          | 35.5                                       | Benton.....              | 38.2                                       |
| Crenshaw.....         | 38.5                                       | Bolivar.....             | 44.7                                       |
| Greene.....           | 53.7                                       | Carroll.....             | 42.9                                       |
| Hale.....             | 44.7                                       | Choctaw.....             | 35.5                                       |
| Lamar.....            | 35.0                                       | Claiborne.....           | 42.5                                       |
| Lowndes.....          | 50.2                                       | Coahoma.....             | 42.8                                       |
| Macon.....            | 37.4                                       | Copiah.....              | 35.9                                       |
| Marengo.....          | 40.4                                       | Franklin.....            | 37.8                                       |
| Perry.....            | 41.5                                       | Greene.....              | 30.8                                       |
| Sumter.....           | 45.1                                       | Holmes.....              | 53.0                                       |
| Wilcox.....           | 46.6                                       | Humphreys.....           | 53.8                                       |
| Florida:              |                                            | Issaquena.....           | 42.7                                       |
| Jefferson.....        | 35.1                                       | Jasper.....              | 40.5                                       |
| Washington.....       | 35.9                                       | Jefferson.....           | 59.0                                       |
| Georgia:              |                                            | Jefferson Davis.....     | 39.8                                       |
| Atkinson.....         | 41.0                                       | Kemper.....              | 48.6                                       |
| Baker.....            | 45.7                                       | Lawrence.....            | 36.9                                       |
| Brooks.....           | 35.2                                       | Leake.....               | 38.5                                       |
| Burke.....            | 43.1                                       | LeFlore.....             | 36.4                                       |
| Calhoun.....          | 43.0                                       | Madison.....             | 39.8                                       |
| Clay.....             | 51.7                                       | Marion.....              | 36.8                                       |
| Crawford.....         | 35.9                                       | Marshall.....            | 44.1                                       |
| Dooly.....            | 39.2                                       | Montgomery.....          | 37.8                                       |
| Early.....            | 36.5                                       | Noxubee.....             | 47.5                                       |
| Hancock.....          | 42.0                                       | Panola.....              | 38.5                                       |
| Jenkins.....          | 35.9                                       | Quitman.....             | 49.8                                       |
| Miller.....           | 40.2                                       | Sharkey.....             | 46.8                                       |
| Quitman.....          | 47.1                                       | Sunflower.....           | 46.2                                       |
| Randolph.....         | 41.8                                       | Tallahatchie.....        | 50.0                                       |
| Stewart.....          | 43.0                                       | Tunica.....              | 55.4                                       |
| Taliaferro.....       | 41.0                                       | Walthall.....            | 35.9                                       |
| Terrell.....          | 35.5                                       | Wayne.....               | 37.3                                       |
| Treutlen.....         | 35.0                                       | Wilkinson.....           | 47.9                                       |
| Union.....            | 35.4                                       | Yalobusha.....           | 37.4                                       |
| Warren.....           | 37.8                                       | Yazoo.....               | 42.7                                       |
| Webster.....          | 41.2                                       | North Carolina:          |                                            |
| Kentucky:             |                                            | Bertie.....              | 37.5                                       |
| Bell.....             | 39.3                                       | Northampton.....         | 38.1                                       |
| Breathitt.....        | 54.9                                       | Perquimans.....          | 35.2                                       |
| Clay.....             | 57.6                                       | Tyrrell.....             | 37.9                                       |
| Clinton.....          | 40.0                                       | South Carolina:          |                                            |
| Cumberland.....       | 39.4                                       | Clarendon.....           | 42.5                                       |
| Elliott.....          | 43.7                                       | Jasper.....              | 37.0                                       |
| Harlan.....           | 36.2                                       | Lee.....                 | 40.1                                       |
| Jackson.....          | 50.2                                       | Williamsburg.....        | 40.5                                       |
| Johnson.....          | 38.5                                       | Tennessee:               |                                            |
| Knott.....            | 56.6                                       | Campbell.....            | 36.2                                       |
| Knox.....             | 48.4                                       | Claiborne.....           | 38.8                                       |
| Lawrence.....         | 40.0                                       | Clay.....                | 39.3                                       |
| Lee.....              | 48.4                                       | Fayette.....             | 44.5                                       |
| Leslie.....           | 55.5                                       | Fentress.....            | 42.9                                       |
| Letcher.....          | 40.1                                       | Grundy.....              | 40.2                                       |
| McCreary.....         | 53.7                                       | Hancock.....             | 55.5                                       |
| Magoffin.....         | 48.9                                       | Haywood.....             | 40.8                                       |
| Martin.....           | 53.4                                       | Jackson.....             | 38.0                                       |
| Metcalfe.....         | 39.7                                       | Lauderdale.....          | 39.6                                       |
| Monroe.....           | 40.5                                       | Overton.....             | 35.8                                       |
| Morgan.....           | 43.5                                       | Scott.....               | 42.1                                       |
| Owsley.....           | 61.6                                       | CHICAGO REGION           |                                            |
| Perry.....            | 39.6                                       |                          |                                            |
| Rockcastle.....       | 36.1                                       | Illinois:                |                                            |
| Russell.....          | 35.7                                       | Pulaski.....             | 35.7                                       |
| Wayne.....            | 50.1                                       | DALLAS-FORT WORTH REGION |                                            |
| Whitley.....          | 39.7                                       |                          |                                            |
|                       |                                            | Arkansas:                |                                            |
|                       |                                            | Chicot.....              | 43.9                                       |



| State and county     | Percent of families below low income level | State and county                                                                                                  | Percent of families below low income level |
|----------------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Fulton .....         | 41.5                                       | Washabawh .....                                                                                                   | 49.3                                       |
| Lee .....            | 43.8                                       | Ziebach .....                                                                                                     | 41.0                                       |
| Lincoln .....        | 36.8                                       | SAN FRANCISCO REGION                                                                                              |                                            |
| Monroe .....         | 38.5                                       | Arizona:                                                                                                          |                                            |
| Newton .....         | 41.9                                       | Apache .....                                                                                                      | 46.5                                       |
| Phillips .....       | 38.1                                       | SEATTLE REGION                                                                                                    |                                            |
| Searcy .....         | 35.4                                       | Alaska:                                                                                                           |                                            |
| Stone .....          | 41.3                                       | Angoon .....                                                                                                      | 97.2                                       |
| Louisiana:           |                                            | Bethel .....                                                                                                      | 58.9                                       |
| Avoyelles .....      | 38.3                                       | Kuskokwim .....                                                                                                   | 55.2                                       |
| Catahoula .....      | 36.6                                       | Wade Hampton .....                                                                                                | 67.8                                       |
| East Carroll .....   | 51.1                                       | APPENDIX C—COMMUNITY SERVICES ADMINISTRATION, COUNTIES WITH 24.5 PERCENT TO 35 PERCENT LOW-INCOME FAMILIES [1970] |                                            |
| Evangeline .....     | 39.4                                       |                                                                                                                   |                                            |
| Franklin .....       | 42.1                                       | State and county                                                                                                  | Percent of families below low income level |
| Madison .....        | 45.1                                       | PHILADELPHIA REGION                                                                                               |                                            |
| Natchitoches .....   | 37.9                                       | Maryland:                                                                                                         |                                            |
| Pointe Coupee .....  | 36.8                                       | Somerset .....                                                                                                    | 24.6                                       |
| Red River .....      | 40.4                                       | Virginia:                                                                                                         |                                            |
| Richland .....       | 37.4                                       | Accomack .....                                                                                                    | 25.2                                       |
| St. Helena .....     | 44.3                                       | Amelia .....                                                                                                      | 26.2                                       |
| St. Landry .....     | 38.4                                       | Bath .....                                                                                                        | 24.9                                       |
| St. Martin .....     | 36.2                                       | Brunswick .....                                                                                                   | 25.4                                       |
| Tensas .....         | 50.1                                       | Buchanan .....                                                                                                    | 27.2                                       |
| West Carroll .....   | 37.5                                       | Buckingham .....                                                                                                  | 29.1                                       |
| West Feliciana ..... | 39.4                                       | Charles City .....                                                                                                | 28.8                                       |
| New Mexico:          |                                            | Cumberland .....                                                                                                  | 33.3                                       |
| Guadalupe .....      | 38.5                                       | Dickenson .....                                                                                                   | 34.0                                       |
| Mora .....           | 57.3                                       | Fluvanna .....                                                                                                    | 27.6                                       |
| Sandoval .....       | 38.3                                       | Greensville .....                                                                                                 | 29.8                                       |
| San Miguel .....     | 39.9                                       | Halifax .....                                                                                                     | 26.1                                       |
| Taos .....           | 35.9                                       | King and Queen .....                                                                                              | 27.1                                       |
| Oklahoma:            |                                            | Louisa .....                                                                                                      | 24.5                                       |
| Adair .....          | 41.9                                       | Mecklenburg .....                                                                                                 | 24.7                                       |
| Pushmataha .....     | 37.0                                       | Middlesex .....                                                                                                   | 26.0                                       |
| Texas:               |                                            | Nelson .....                                                                                                      | 28.6                                       |
| Brooks .....         | 42.0                                       | Northampton .....                                                                                                 | 32.2                                       |
| Cameron .....        | 38.6                                       | Rappahannock .....                                                                                                | 30.5                                       |
| Dimmit .....         | 51.0                                       | Richmond .....                                                                                                    | 24.6                                       |
| Duval .....          | 43.6                                       | Russell .....                                                                                                     | 25.4                                       |
| Edwards .....        | 35.9                                       | Scott .....                                                                                                       | 27.0                                       |
| Frio .....           | 35.5                                       | Southampton .....                                                                                                 | 27.6                                       |
| Hidalgo .....        | 42.2                                       | Sussex .....                                                                                                      | 26.3                                       |
| Jim Hogg .....       | 46.3                                       | Westmoreland .....                                                                                                | 28.9                                       |
| Kinney .....         | 45.7                                       | Wise .....                                                                                                        | 27.4                                       |
| La Salle .....       | 48.8                                       | West Virginia:                                                                                                    |                                            |
| Loving .....         | 46.2                                       | Barbour .....                                                                                                     | 25.9                                       |
| Maverick .....       | 44.1                                       | Boone .....                                                                                                       | 26.5                                       |
| Presidio .....       | 40.9                                       | Grant .....                                                                                                       | 28.0                                       |
| Robertson .....      | 36.1                                       | Hardy .....                                                                                                       | 26.9                                       |
| San Jacinto .....    | 38.3                                       | McDowell .....                                                                                                    | 29.8                                       |
| Starr .....          | 52.3                                       | Monroe .....                                                                                                      | 29.2                                       |
| Webb .....           | 38.5                                       | Nicholas .....                                                                                                    | 25.2                                       |
| Willacy .....        | 46.2                                       | Pendleton .....                                                                                                   | 28.7                                       |
| Zapata .....         | 50.6                                       | Pocahontas .....                                                                                                  | 27.7                                       |
| Zavala .....         | 43.6                                       | Preston .....                                                                                                     | 26.9                                       |
| KANSAS CITY REGION   |                                            | Ritchie .....                                                                                                     | 25.0                                       |
| Missouri:            |                                            | Roane .....                                                                                                       | 27.1                                       |
| Oregon .....         | 36.2                                       |                                                                                                                   |                                            |
| Ripley .....         | 36.5                                       |                                                                                                                   |                                            |
| DENVER REGION        |                                            |                                                                                                                   |                                            |
| Colorado:            |                                            |                                                                                                                   |                                            |
| Conejos .....        | 36.7                                       |                                                                                                                   |                                            |
| North Dakota:        |                                            |                                                                                                                   |                                            |
| Sioux .....          | 38.2                                       |                                                                                                                   |                                            |
| South Dakota:        |                                            |                                                                                                                   |                                            |
| Buffalo .....        | 38.8                                       |                                                                                                                   |                                            |
| Shannon .....        | 44.6                                       |                                                                                                                   |                                            |
| Todd .....           | 40.8                                       |                                                                                                                   |                                            |

| State and county | Percent of families below low income level | State and county | Percent of families below low income level |
|------------------|--------------------------------------------|------------------|--------------------------------------------|
| Summers .....    | 33.7                                       | Lincoln .....    | 29.9                                       |
| Tucker .....     | 24.9                                       | Long .....       | 31.8                                       |
| Wirt .....       | 29.3                                       | Mc Intosh .....  | 30.3                                       |
| ATLANTA REGION   |                                            | Macon .....      | 34.8                                       |
| Alabama:         |                                            | Marion .....     | 34.0                                       |
| Bibb .....       | 30.0                                       | Meriwether ..... | 26.3                                       |
| Butler .....     | 31.5                                       | Mitchell .....   | 30.2                                       |
| Chilton .....    | 24.8                                       | Montgomery ..... | 27.6                                       |
| Clarke .....     | 29.8                                       | Morgan .....     | 29.5                                       |
| Clay .....       | 28.8                                       | Pulaski .....    | 29.7                                       |
| Covington .....  | 24.7                                       | Schley .....     | 27.5                                       |
| Dallas .....     | 31.6                                       | Screven .....    | 34.5                                       |
| De Kalb .....    | 29.5                                       | Sumter .....     | 25.9                                       |
| Escambia .....   | 25.5                                       | Talbot .....     | 34.6                                       |
| Fayette .....    | 25.3                                       | Tattnall .....   | 28.5                                       |
| Geneva .....     | 25.7                                       | Taylor .....     | 31.1                                       |
| Henry .....      | 31.9                                       | Telfair .....    | 30.9                                       |
| Lawrence .....   | 27.3                                       | Thomas .....     | 25.5                                       |
| Monroe .....     | 34.6                                       | Toombs .....     | 26.5                                       |
| Pickens .....    | 32.5                                       | Towns .....      | 31.2                                       |
| Pike .....       | 29.9                                       | Turner .....     | 26.6                                       |
| Randolph .....   | 27.5                                       | Twiggs .....     | 33.5                                       |
| Russell .....    | 28.2                                       | Washington ..... | 33.0                                       |
| Washington ..... | 31.8                                       | Wheeler .....    | 32.7                                       |
| Florida:         |                                            | Wilcox .....     | 34.1                                       |
| Calhoun .....    | 34.0                                       | Wilkes .....     | 28.5                                       |
| Dixie .....      | 25.9                                       | Wilkinson .....  | 25.3                                       |
| Franklin .....   | 31.3                                       | Worth .....      | 32.5                                       |
| Gadsden .....    | 31.2                                       | Kentucky:        |                                            |
| Hamilton .....   | 31.8                                       | Adair .....      | 34.6                                       |
| Hardee .....     | 24.6                                       | Allen .....      | 30.1                                       |
| Holmes .....     | 32.7                                       | Bath .....       | 31.3                                       |
| Jackson .....    | 30.7                                       | Bracken .....    | 25.0                                       |
| Liberty .....    | 28.5                                       | Butler .....     | 30.5                                       |
| Madison .....    | 33.5                                       | Carter .....     | 28.8                                       |
| Sumter .....     | 25.9                                       | Casey .....      | 30.9                                       |
| Suwannee .....   | 28.1                                       | Edmonson .....   | 28.2                                       |
| Wakulla .....    | 26.9                                       | Estill .....     | 33.4                                       |
| Walton .....     | 26.8                                       | Fleming .....    | 26.5                                       |
| Georgia:         |                                            | Floyd .....      | 34.9                                       |
| Appling .....    | 31.8                                       | Fulton .....     | 25.9                                       |
| Bacon .....      | 28.7                                       | Gallatin .....   | 24.6                                       |
| Ben Hill .....   | 24.5                                       | Grayson .....    | 28.6                                       |
| Berrien .....    | 25.5                                       | Hart .....       | 27.5                                       |
| Bryan .....      | 25.3                                       | Laurel .....     | 34.6                                       |
| Chandle .....    | 34.7                                       | Lewis .....      | 28.1                                       |
| Clinch .....     | 29.3                                       | Lincoln .....    | 29.9                                       |
| Coffee .....     | 26.4                                       | Marion .....     | 26.2                                       |
| Cook .....       | 25.6                                       | Menifee .....    | 32.0                                       |
| Crisp .....      | 26.8                                       | Ohio .....       | 24.7                                       |
| Dawson .....     | 25.9                                       | Owen .....       | 24.9                                       |
| Decatur .....    | 33.0                                       | Pike .....       | 32.2                                       |
| Dodge .....      | 29.3                                       | Powell .....     | 28.1                                       |
| Echols .....     | 32.7                                       | Pulaski .....    | 29.3                                       |
| Emmanuel .....   | 29.2                                       | Robertson .....  | 28.9                                       |
| Evans .....      | 32.9                                       | Rowan .....      | 26.9                                       |
| Gilmer .....     | 24.6                                       | Todd .....       | 25.7                                       |
| Glascok .....    | 33.0                                       | Trigg .....      | 24.6                                       |
| Grady .....      | 29.0                                       | Mississippi:     |                                            |
| Green .....      | 26.8                                       | Adams .....      | 28.7                                       |
| Harris .....     | 25.7                                       | Calhoun .....    | 32.8                                       |
| Irwin .....      | 34.9                                       | Chickasaw .....  | 32.1                                       |
| Jasper .....     | 32.2                                       | Clarke .....     | 33.0                                       |
| Jeff Davis ..... | 24.5                                       | Clay .....       | 25.9                                       |
| Jefferson .....  | 32.6                                       | Covington .....  | 31.8                                       |
| Johnson .....    | 32.0                                       | Grenada .....    | 27.9                                       |
| Lanier .....     | 26.7                                       | Itawamba .....   | 25.4                                       |
| Laurens .....    | 26.3                                       | Lafayette .....  | 28.6                                       |
| Lee .....        | 28.1                                       | Lamar .....      | 27.8                                       |
| Liberty .....    | 26.3                                       | Lincoln .....    | 29.0                                       |

| State and county | Percent of families below low income level | State and county         | Percent of families below low income level |
|------------------|--------------------------------------------|--------------------------|--------------------------------------------|
| Neshoba.....     | 30.0                                       | Orangeburg.....          | 31.4                                       |
| Newton.....      | 29.6                                       | Sumter.....              | 25.9                                       |
| Oktibbeha.....   | 28.8                                       | Tennessee:               |                                            |
| Pearl River..... | 26.1                                       | Bledsoe.....             | 33.1                                       |
| Perry.....       | 30.8                                       | Cannon.....              | 26.8                                       |
| Pike.....        | 30.8                                       | Chester.....             | 27.1                                       |
| Pontotoc.....    | 32.4                                       | Cocke.....               | 29.3                                       |
| Prentiss.....    | 24.7                                       | Crockett.....            | 25.1                                       |
| Scott.....       | 32.6                                       | Cumberland.....          | 29.0                                       |
| Simpson.....     | 30.4                                       | Grainger.....            | 30.6                                       |
| Smith.....       | 32.9                                       | Hardeman.....            | 31.2                                       |
| Tate.....        | 33.2                                       | Hardin.....              | 30.4                                       |
| Tippah.....      | 31.8                                       | Henderson.....           | 25.9                                       |
| Union.....       | 27.6                                       | Houston.....             | 25.7                                       |
| Washington.....  | 34.3                                       | Johnson.....             | 30.4                                       |
| Webster.....     | 34.1                                       | Lake.....                | 33.2                                       |
| Winston.....     | 32.9                                       | Lawrence.....            | 24.9                                       |
| North Carolina:  |                                            | Lincoln.....             | 25.2                                       |
| Alleghany.....   | 26.6                                       | McNairy.....             | 30.7                                       |
| Anson.....       | 27.3                                       | Macon.....               | 29.1                                       |
| Ashe.....        | 28.0                                       | Marion.....              | 25.1                                       |
| Avery.....       | 29.2                                       | Meigs.....               | 30.0                                       |
| Beaufort.....    | 25.0                                       | Monroe.....              | 26.1                                       |
| Bladen.....      | 30.7                                       | Morgan.....              | 27.6                                       |
| Cherokee.....    | 25.2                                       | Perry.....               | 27.4                                       |
| Chowan.....      | 25.0                                       | Pickett.....             | 33.9                                       |
| Clay.....        | 34.7                                       | Rhea.....                | 25.3                                       |
| Columbus.....    | 28.0                                       | Sequatchie.....          | 24.9                                       |
| Duplin.....      | 29.0                                       | Stewart.....             | 31.2                                       |
| Edgecombe.....   | 26.5                                       | Tipton.....              | 29.4                                       |
| Franklin.....    | 28.3                                       | Trousdale.....           | 30.6                                       |
| Gates.....       | 25.7                                       | Union.....               | 34.6                                       |
| Graham.....      | 24.8                                       | Wayne.....               | 28.2                                       |
| Greene.....      | 32.8                                       |                          |                                            |
| Halifax.....     | 30.3                                       | CHICAGO REGION           |                                            |
| Hertford.....    | 27.6                                       | Illinois:                |                                            |
| Hoke.....        | 26.9                                       | Alexander.....           | 31.8                                       |
| Hyde.....        | 34.1                                       | Pope.....                | 29.3                                       |
| Jackson.....     | 25.4                                       | Minnesota:               |                                            |
| Johnston.....    | 24.9                                       | Mahnomen.....            | 26.4                                       |
| Jones.....       | 29.8                                       | Todd.....                | 24.5                                       |
| Macon.....       | 24.9                                       | Ohio:                    |                                            |
| Madison.....     | 32.1                                       | Adams.....               | 27.4                                       |
| Martin.....      | 28.9                                       | Wisconsin:               |                                            |
| Mitchell.....    | 28.1                                       | Menominee.....           | 34.0                                       |
| Pamlico.....     | 29.0                                       |                          |                                            |
| Pender.....      | 28.8                                       | DALLAS-FORT WORTH REGION |                                            |
| Pitt.....        | 27.1                                       | Arkansas:                |                                            |
| Robeson.....     | 31.8                                       | Ashley.....              | 25.2                                       |
| Sampson.....     | 29.0                                       | Bradley.....             | 29.6                                       |
| Swain.....       | 26.9                                       | Calhoun.....             | 29.6                                       |
| Warren.....      | 34.5                                       | Clay.....                | 31.3                                       |
| Yancy.....       | 30.5                                       | Cleburne.....            | 33.8                                       |
| South Carolina:  |                                            | Cleveland.....           | 32.1                                       |
| Allendale.....   | 31.7                                       | Crittenden.....          | 32.8                                       |
| Bamberg.....     | 28.6                                       | Cross.....               | 28.7                                       |
| Barnwell.....    | 24.7                                       | Dallas.....              | 24.7                                       |
| Berkeley.....    | 26.1                                       | Deaha.....               | 34.2                                       |
| Calhoun.....     | 34.6                                       | Drew.....                | 27.1                                       |
| Colleton.....    | 31.7                                       | Hempstead.....           | 28.3                                       |
| Dillon.....      | 33.2                                       | Izard.....               | 29.7                                       |
| Edgefield.....   | 30.3                                       | Jackson.....             | 25.0                                       |
| Fairfield.....   | 31.5                                       | Johnson.....             | 25.6                                       |
| Georgetown.....  | 29.6                                       | Lafayette.....           | 33.0                                       |
| Hampton.....     | 31.3                                       | Lawrence.....            | 29.5                                       |
| Horry.....       | 25.4                                       | Logan.....               | 27.7                                       |
| McCormick.....   | 34.4                                       | Lonoke.....              | 26.2                                       |
| Marion.....      | 32.1                                       | Madison.....             | 33.3                                       |
| Marlboro.....    | 27.6                                       | Marion.....              | 30.5                                       |
|                  |                                            | Mississippi.....         | 29.6                                       |



| State and county      | Percent of families below low income level |
|-----------------------|--------------------------------------------|
| Montgomery.....       | 29.7                                       |
| Nevada.....           | 31.9                                       |
| Ouachita.....         | 25.2                                       |
| Perry.....            | 31.2                                       |
| Pike.....             | 24.8                                       |
| Poinsett.....         | 28.6                                       |
| Prairie.....          | 29.4                                       |
| Randolph.....         | 29.7                                       |
| St. Francis.....      | 34.8                                       |
| Scott.....            | 28.5                                       |
| Sharp.....            | 32.9                                       |
| Van Buren.....        | 32.5                                       |
| White.....            | 24.5                                       |
| Woodruff.....         | 34.3                                       |
| Louisiana:            |                                            |
| Acadia.....           | 29.6                                       |
| Allen.....            | 30.1                                       |
| Assumption.....       | 30.4                                       |
| Bienville.....        | 34.1                                       |
| Caldwell.....         | 33.7                                       |
| Claiborne.....        | 33.2                                       |
| Concordia.....        | 32.2                                       |
| De Soto.....          | 34.7                                       |
| East Feliciana.....   | 33.8                                       |
| Grant.....            | 29.2                                       |
| Iberville.....        | 30.6                                       |
| Jefferson Davis.....  | 28.1                                       |
| Morehouse.....        | 32.9                                       |
| Sabine.....           | 34.9                                       |
| Tangipahoa.....       | 33.5                                       |
| Union.....            | 27.1                                       |
| Vermillion.....       | 25.2                                       |
| Washington.....       | 26.3                                       |
| West Baton Rouge..... | 27.3                                       |
| Winn.....             | 31.2                                       |
| New Mexico:           |                                            |
| De Baca.....          | 24.5                                       |
| Harding.....          | 28.3                                       |
| McKinley.....         | 33.7                                       |
| Rio Arriba.....       | 34.7                                       |
| Socorro.....          | 29.5                                       |
| Torrance.....         | 32.6                                       |
| Union.....            | 26.2                                       |
| Oklahoma:             |                                            |
| Atoka.....            | 29.9                                       |
| Cherokee.....         | 28.0                                       |
| Choctaw.....          | 33.4                                       |
| Coal.....             | 34.0                                       |
| Delaware.....         | 31.0                                       |
| Haskell.....          | 26.7                                       |
| Hughes.....           | 29.3                                       |
| Johnston.....         | 31.1                                       |
| Latimer.....          | 29.8                                       |
| Le Flore.....         | 29.4                                       |
| Love.....             | 26.7                                       |
| McCurtain.....        | 32.4                                       |
| McIntosh.....         | 26.8                                       |
| Okfuskee.....         | 34.7                                       |
| Sequoyah.....         | 28.1                                       |
| Texas:                |                                            |
| Atascosa.....         | 28.7                                       |
| Austin.....           | 25.7                                       |
| Bastrop.....          | 27.5                                       |
| Brewster.....         | 27.1                                       |
| Burleson.....         | 26.4                                       |
| Caldwell.....         | 27.7                                       |
| Camp.....             | 32.0                                       |
| Collingsworth.....    | 25.9                                       |
| Delta.....            | 26.9                                       |

| State and county   | Percent of families below low income level |
|--------------------|--------------------------------------------|
| Falls.....         | 34.6                                       |
| Fayette.....       | 28.1                                       |
| Foard.....         | 28.9                                       |
| Franklin.....      | 27.2                                       |
| Goliad.....        | 28.2                                       |
| Gonzales.....      | 28.0                                       |
| Grimes.....        | 34.5                                       |
| Houston.....       | 33.0                                       |
| Hudspeth.....      | 28.2                                       |
| Jeff Davis.....    | 26.5                                       |
| Jim Wells.....     | 26.6                                       |
| Karnes.....        | 32.8                                       |
| Kenedy.....        | 30.1                                       |
| Kent.....          | 25.1                                       |
| Lamb.....          | 25.3                                       |
| Lavaca.....        | 32.2                                       |
| Lee.....           | 26.8                                       |
| Leon.....          | 30.4                                       |
| Limestone.....     | 24.7                                       |
| Live Oak.....      | 26.6                                       |
| Madison.....       | 27.7                                       |
| Marion.....        | 30.9                                       |
| Martin.....        | 25.0                                       |
| Mason.....         | 27.6                                       |
| Medina.....        | 24.8                                       |
| Menard.....        | 27.7                                       |
| Motley.....        | 24.8                                       |
| Newton.....        | 26.0                                       |
| Panola.....        | 24.6                                       |
| Polk.....          | 28.5                                       |
| Rains.....         | 26.5                                       |
| Real.....          | 27.6                                       |
| Red River.....     | 31.8                                       |
| Sabine.....        | 30.9                                       |
| San Augustine..... | 33.2                                       |
| San Patricio.....  | 25.2                                       |
| San Saba.....      | 30.8                                       |
| Shelby.....        | 26.8                                       |
| Sutton.....        | 26.3                                       |
| Trinity.....       | 28.5                                       |
| Uvalde.....        | 29.0                                       |
| Val Verde.....     | 24.5                                       |
| Washington.....    | 26.4                                       |
| Wharton.....       | 24.7                                       |
| Wilson.....        | 25.7                                       |
| KANSAS CITY REGION |                                            |
| Missouri:          |                                            |
| Bollinger.....     | 27.4                                       |
| Butler.....        | 27.5                                       |
| Carter.....        | 25.3                                       |
| Dade.....          | 24.8                                       |
| Dallas.....        | 29.6                                       |
| Douglas.....       | 32.5                                       |
| Dunklin.....       | 29.8                                       |
| Hickory.....       | 26.7                                       |
| Mercer.....        | 24.5                                       |
| Mississippi.....   | 33.5                                       |
| New Madrid.....    | 33.4                                       |
| Ozark.....         | 32.9                                       |
| Pemiscot.....      | 34.7                                       |
| Putnam.....        | 28.0                                       |
| Reynolds.....      | 32.6                                       |
| St. Clair.....     | 25.6                                       |
| Shannon.....       | 31.2                                       |
| Texas.....         | 25.6                                       |
| Washington.....    | 25.4                                       |
| Wayne.....         | 30.8                                       |
| Wright.....        | 28.4                                       |

| State and county            | Percent of families below low income level |
|-----------------------------|--------------------------------------------|
| <b>Nebraska:</b>            |                                            |
| Boyd .....                  | 32.4                                       |
| Cedar .....                 | 27.7                                       |
| Keya Paha .....             | 31.7                                       |
| Knox .....                  | 27.7                                       |
| <b>DENVER REGION</b>        |                                            |
| <b>Colorado:</b>            |                                            |
| Costilla .....              | 34.7                                       |
| Saguache .....              | 32.6                                       |
| <b>Montana:</b>             |                                            |
| Blaine .....                | 25.2                                       |
| <b>North Dakota:</b>        |                                            |
| Billings .....              | 28.0                                       |
| Rolette .....               | 28.9                                       |
| <b>South Dakota:</b>        |                                            |
| Bennett .....               | 26.9                                       |
| Charles Mix .....           | 27.8                                       |
| Corson .....                | 32.4                                       |
| Dewey .....                 | 31.5                                       |
| Hutchinson .....            | 24.7                                       |
| Hyde .....                  | 25.4                                       |
| Mellette .....              | 26.9                                       |
| <b>Utah:</b>                |                                            |
| San Juan .....              | 33.2                                       |
| <b>SAN FRANCISCO REGION</b> |                                            |
| <b>Arizona:</b>             |                                            |
| Navajo .....                | 32.0                                       |
| <b>SEATTLE REGION</b>       |                                            |
| <b>Alaska:</b>              |                                            |
| Barrow .....                | 27.7                                       |
| Bristol Bay Division .....  | 32.8                                       |
| Kobuk .....                 | 33.0                                       |
| Nome .....                  | 31.2                                       |

[43 FR 52438, Nov. 9, 1978; 43 FR 58376, Dec. 14, 1978]

### Subpart 1068.30—Membership Dues and Related Expenses Paid to Professional Organizations (CSA Instruction 6803-6)

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 42 FR 63171, Dec. 15, 1977, unless otherwise noted.

#### § 1068.30-1 Applicability.

This subpart is applicable to all grantees receiving financial assistance under the Economic Opportunity Act of 1964 as amended when that assistance is administered by the Community Services Administration.

#### § 1068.30-2 Policy.

(a) Allowable Costs. CSA permits the expenditure of grant funds for the payment of membership dues and

other related expenses to professional organizations whose purposes are closely related to those of the grant and/or in furtherance of the objectives of the Economic Opportunity Act and within the limitations described below:

(1) Grantees are limited to the purchase of a single agency membership in any appropriate organization(s) which are found acceptable by CSA whether at the state, regional, or national level. (Note: This does not limit the number of organizations to which a grantee may belong but rather limits the number of memberships which it may purchase in any one organization.)

(2) Memberships may not be purchased in the name of any delegate agency or individual.

(3) Expenditures of grant funds for costs incurred through attendance at events sponsored by professional organizations, including travel and per diem, must be in compliance with the relevant CSA regulations. (Where specific CSA regulations or guidelines do not exist, for example for registration costs, grantees will be guided by costs charged by comparable organizations. Excessive costs will be disallowed.)

[42 FR 63171, Dec. 15, 1977, as amended at 45 FR 64940, Oct. 1, 1980]

#### § 1068.30-3 Criteria for review.

(a) Review Criteria. If a CSA funded organization proposes to expend CSA funds for membership in a state, regional or national association, it will assure that:

(1) Its purposes are closely related to that of the grant and to furtherance of the objectives of the EOA;

(2) The membership benefits the program/agency and not merely an individual;

(3) The organization has not been found to be unacceptable by CSA (see (b) below); and

(4) The professional organization to which membership dues will be paid is not providing funds or other support, directly or indirectly, to an organization or organizations which CSA has determined is not an appropriate recipient of membership dues derived from grant funds. (See (b) below.)

(b) Determination of acceptability.

(1) CSA will make a determination as to the acceptability of organizations as recipients of membership dues where warranted. The determination may be based on the findings of audits conducted by CSA or undertaken by a third party on its behalf or other sources of information/data which will enable CSA to make the following determinations:

(i) That the activities of the organization are in furtherance of the objectives of the EOA, and

(ii) That the organization has an acceptable track record based on, where appropriate, such factors as:

- (A) Administrative capability;
- (B) Soundness of its fiscal system;
- (C) Availability and acceptability of its audits;
- (D) Procedures for and conduct of elections;
- (E) Federal access to records;
- (F) Clear and concise recordkeeping, including travel expenditures.

(2) CSA intends to publish specific criteria and procedures for use by Headquarters and Regional Offices in undertaking audits.

(3) The list of unacceptable organizations will be published as a revision to this subpart and to Attachment A of Instruction 6803-6 whenever there are changes to the list.

(4) Attachment A contains the name(s) of organizations currently found to be unacceptable. All other national, State and regional organizations are determined to be acceptable at this time if they are in conformance with the criteria outlined in § 1068.30-3(a). However, CSA retains the prerogative to undertake reviews of other organizations at any time and subsequently to revise and publish the list. If CSA finds an organization to be unacceptable to receive CSA funds in payment of membership dues, CSA will also consider unallowable any other expenditures of grant funds, effective the date of the determination, which go to support directly or indirectly activities of this organization including travel to meetings or training seminars sponsored by such organization, payment of registration fees at such events, etc.

[42 FR 63171, Dec. 15, 1977, as amended at 45 FR 64940, Oct. 1, 1980]

#### ATTACHMENT A

##### LIST OF UNACCEPTABLE ORGANIZATIONS

National Association for Community Development (NACD)

#### Subpart 1068.42—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801-1 and 6801-1 Ch 1)

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 44 FR 56568, Oct. 1, 1979, unless otherwise noted.

##### § 1068.42-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV, and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration. This subpart is not applicable to contractors under CSA procurement contracts.

##### § 1068.42-2 Effective date.

August 5, 1970 (CSA Instruction 6801-1). May 11, 1971 (CSA Instruction 6801-1, Change 1).

##### § 1068.42-3 Definitions.

"Delegate agency" means an agency to which a grantee delegates the performance of an entire program account of a grant or a substantial part of a single program account. As used in this subpart the term also refers to "subcontractors" who contract with the grantee to perform any major portion of a CSA funded program.

"Grant-grantee" as used in this subpart, also refers to contracts of assistance and contractors under such contracts respectively.

"Responsible CSA official" means the CSA official in the Headquarters Office, or the Regional Office of CSA, who has authority to award and administer the CSA grant in question.

##### § 1068.42-4 Policy.

(a) Before funds will be released to a grantee receiving an initial Community Services Administration (CSA) grant, the grantee, must submit a



statement to CSA certifying that its accounting system and that of its delegated agencies meet the standards set forth in Section 243(a) of the EOA. See Appendix A of this subpart. Within three (3) months after the effective date of an initial grant, a grantee must have its accounting system surveyed and evaluated by an auditor. On the basis of the auditor's findings and conclusions, the CSA Director or the Director's designee will determine whether the accounting system meets CSA standards and, if not, whether to suspend the grant.

(b) An audit of each grant must be made annually. On the basis of resultant findings and conclusions, the Director or the Director's designee will determine whether any of the costs or expenditures incurred shall be disallowed as charges against grant funds. In the event of disallowance, the Director may seek recovery of sums by appropriate means. The Director may also impose additional requirements to assure that the conditions that gave rise to the disallowance have been corrected and will not recur.

(c) Grantees must require of delegate agencies substantially the same audit responsibilities that CSA requires of grantees. However, grantees remain responsible to CSA for the proper expenditure of and accounting for all grant funds, whether or not delegated to other agencies.

#### § 1068.42-5 Accounting system certification.

(a) *General.* The accounting system certification states that the grantee and its delegate agencies (or subcontractors for performance of any major portion of the assisted program) have established an adequate accounting system with appropriate internal controls to safeguard assets, check the accuracy and reliability of their accounting data, promote operating efficiency and encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by CSA.

(1) The certification may be furnished by an independent certified public accountant, an independent State-licensed public accountant, or, in

the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to the grantee. The statements in Appendices B and C of this subpart will satisfy CSA's requirements for an accounting system certification.

(b) *New grantees.* A grantee applying for its initial CSA grant shall submit this certification to the granting office as part of the funding request. If an applicant is unable to obtain the certification, it should forward a statement of explanation to the granting office. The granting office may process the application without the statement where it can reasonably be expected that the statement will be furnished at or before the commencement of the grant period (that is when a new organization's accounting system is still in the process of development at the time of application). In no event, however, will any CSA funds be released to the grantee until the proper statement has been submitted.

(c) *On-going grantees.* Although accounting system certifications are usually required only for the initial CSA grant to the grantee, there may be instances when CSA will require a new certification from an on-going grantee. For example, when there has been a significant increase in the amount of funds provided by CSA. An on-going grantee will be notified by CSA if a new certification must be submitted.

(d) *Delegate agencies.* A grantee may not release or commit any grant funds to a new delegate agency unless it has received from that agency an accounting system certification appropriately modeled after those shown in Appendices B and C of this subpart. If an existing delegate agency is to receive a substantial increase in funds from the grantee, a new certification must also be submitted to the grantee. These certifications are to be obtained by the grantee from its delegate agencies for retention among the grantee's records and need not be transmitted to CSA unless CSA requests them. CSA may disallow as a charge against the grant any funds released in violation of the requirement stated in this paragraph.

§ 1068.42-6 Auditor selection and responsibilities.

(a) *Selection of auditor.* If the grantee is a private agency, the services of an independent certified public accountant, or independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, shall be secured. If the grantee is a local government or public agency, or if its accounting records are maintained by a local government or public agency, the auditing official or official governmental auditing agency which customarily conducts the agency's audits may be substituted for an independent auditor provided that the provisions of paragraph (d) of § 1068.42.9 are complied with.

(1) A grantee receiving an initial CSA grant shall, within thirty (30) days of the receipt of the CSA Form 314, Statement of CAP Grant, supply the responsible CSA official and the Regional Auditor with the name of the auditor or auditing organization which it has selected. CSA will notify the grantee if its selection is not acceptable. If no notice is received from CSA within fifteen (15) calendar days of the nomination, the grantee may engage the auditor. The Regional Auditor will provide the auditor with copies of the Audit Guide.

(2) The auditor approved to conduct the preliminary audit survey may also conduct the annual audit. Once an auditor has been selected and approved, it is not necessary to renominate the auditor in subsequent years as long as he/she complies with the provisions of the Audit Guide and CSA directives. However, when a grantee changes its auditor or when CSA notifies the grantee that its present auditor is unacceptable, renomination must take place and approval must again be obtained from CSA.

(3) When Federal audits are performed in accordance with the Audit Guide, they may be acceptable in lieu of an audit by a certified or licensed public accountant. See paragraph (c) § 1068.42-9. The responsible CSA official will determine whether the scheduled completion date of such an audit will satisfy CSA's time requirement.

(4) The grantee shall furnish the auditor with copies of the approved grant proposal, official grant documents, and all applicable CSA directives, including this subpart.

(b) *Auditor's responsibilities.* The auditor selected by the grantee is responsible for conducting a preliminary audit survey and/or annual audit in accordance with provisions of the Audit Guide. The audit survey will be directed toward an evaluation of the adequacy of the grantee's accounting system and internal controls. The survey should determine whether sufficient internal controls have been established to safeguard assets, check the accuracy and reliability of accounting data, promote operating efficiency and encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by CSA.

(1) The annual audit will be for the purpose of determining whether the grantee and its delegate agencies have adequately discharged their financial responsibilities and to evaluate compliance with grant conditions and with CSA directives.

(2) It is therefore essential that the independent auditors be familiar with CSA grant conditions as well as with other Federal requirements, official memoranda and publications of CSA and, particularly, the contents of this subpart. These materials will be furnished by the grantee.

(3) Independent auditors should clearly understand their responsibilities in this area. They must be aware that they are responsible for pointing out, in their report, any matters of audit importance both to the grantee and to CSA. The report should include an evaluation of the accounting system and internal controls and make recommendations for improvements.

(4) The auditor should submit five (5) copies of all reports to the Regional Auditor concurrent with his/her submission to the grantee.

§ 1068.42-7 Required preliminary audit survey.

(a) *Grantee.* Immediately after receipt of CSA Form 314, Statement of

CAP Grant, for an initial CSA grant, the grantee shall arrange for an independent auditor to conduct, with three (3) months after the effective date of the grant, a preliminary audit survey to evaluate the adequacy of the grantee's accounting system and internal controls and ability to meet the standards set forth in Section 243(a) of the EOA as detailed in the Audit Guide.

(1) The auditor should submit, within three (3) months after the effective date of the grant, five (5) copies of the survey report to the Regional Auditor concurrent with his/her submission to the grantee.

(2) A preliminary audit survey may also be required when a grantee's refunding grant action includes a significant increase in its funding level. When these situations occur, the grantee will be notified by CSA that a survey is required.

(3) If a survey report itself is unacceptable to CSA (that is, the report does not conform to the requirement in the Audit Guide), the grantee will receive notice of this fact from CSA. In such instances, the cost of the survey may be disallowed as a charge against grant funds.

(4) If the preliminary audit survey conducted by the grantee's auditor does not cover the accounting systems of all delegate agencies, the grantee must comply with paragraph (b) of this section.

(b) *Delegate agencies.* Whenever a grantee is required to secure an accounting system certification from a delegate agency, it shall also require that within three (3) months of the effective date of the delegate agency agreement, a preliminary audit survey of the delegate agency's accounting system be conducted by an independent auditor. This requirement shall be included in the delegate agency agreement. The grantee is responsible for determining, on the basis of the survey report, whether the delegate agency's accounting system and internal controls meet the standards of Section 243(a) of the EOA. The grantee shall consult with the responsible CSA official to determine the appropriate action to be taken in those cases where the accounting system of a delegate agency is not adequate. However,

the responsibility for ensuring that delegate agencies establish and maintain adequate accounting systems rests with the grantee. CSA may disallow any charges to grant funds resulting from expenditures by a delegate agency after the grantee has received notice of the inadequacy of the delegate agency's accounting system, or after the grantee has failed to require the timely submission by the delegate agency of a preliminary accounting system survey.

(c) *Response to Preliminary Audit Survey Findings.* On the basis of findings and conclusions resulting from the survey, the Director, or the Director's designee, will determine whether the grantee's accounting system and internal controls have been shown to meet the standards of section 243(a) of the EOA and, if not, whether to suspend the grant. The grantee will be advised in writing what further action is needed to satisfy CSA's requirements. If major deficiencies are disclosed, the Director, or the Director's designee, may suspend the grant or advise the grantee in writing that corrective action must be taken within thirty (30) calendar days.

(1) In the event of suspension, the grantee will be given a specified amount of time, which will not exceed six (6) months, within which to establish the necessary systems and controls. In the event of failure to do so within the time allowed, the grant will be terminated pursuant to CSA's published regulations.

#### § 1068.42-8 Required annual audit.

(a) *Grantee.* Each grantee shall arrange for an annual audit to ensure that the financial statements present fairly the financial position of the grantee, that the grantee is complying with applicable CSA directives and with general and special grant conditions, and that appropriate financial and administrative procedures and controls have been installed and are operating effectively. In the case of community action agencies and other grantees on a program year basis, the audit shall cover the grantee's prior program year in total unless CSA has approved in writing a different audit



period. In the case of grantees not on a program year basis, the audit shall cover the first full year of the grant period (or the entire grant period if less than a year) and audits conducted thereafter shall cover each succeeding year, and the final fraction of a year, if any, of the grant period. Five (5) copies of the report shall be submitted by the auditor to the Regional Auditor concurrent with his submission to the grantee within six (6) months after the end of the program year or grant period audited. CSA grant funds may not be used for more than one audit annually, except where CSA requests in writing additional audits.

(1) If an audit report itself is unacceptable to CSA (that is, the report does not conform to the requirements in the Audit Guide), the grantee will receive notice as to what further action, if any, is necessary to meet CSA's requirements. In such instances, the cost of the audit may be disallowed as a charge against grant funds.

(b) *Delegate agencies.* The grantee is responsible for either including delegate agencies' administration of grant programs within its own annual audit or of ensuring that separate independent audits are conducted for delegate agencies. Whether or not the delegation of a portion of the grant program has been approved by CSA, the grantee remains responsible for proper accounting for expenditures of grant funds. The Audit Guide contains detailed directions on the inclusion of delegate agency information in the grantee's audit report.

(c) *Response to annual audit findings.* Grantee shall respond in writing to observations and recommendations in annual audit reports when requested to do so by CSA. Unless an extension of time is expressly granted, the response shall be submitted to the responsible CSA official in five (5) copies, within thirty (30) calendar days from the date CSA notifies the grantee of findings and recommendations.

(1) In the response, the grantee may take exception to particular findings and recommendations. The rationale for such exceptions should be clearly set out in the response. The response should point out corrections already

made and state what action is proposed and the estimated completion date of such action. Although the grantee need not send the granting office all documentation supporting corrections unless requested to do so, documentation of actions taken is very important and must be available for review during later audits.

(2) CSA will consider the grantee's response and any additional requested information in determining whether specific expenditures of project funds or contributions to the non-Federal share would be disallowed. If any are disallowed, the responsible CSA official will send the grantee written notice of the determination to disallow expenditures. Unless the grantee appeals the determination within thirty (30) calendar days after the date of the notice, the determination will become final.

(d) *Grantee appeals of audit disallowances.* An appeal shall be in writing and shall contain a clear statement of the issue or issues which the grantee wishes to have considered in the appeal. The grantee may include with the appeal statements any supporting facts or arguments which the grantee feels should be considered. Appeals from determinations made by Headquarters officials should be addressed to the Deputy Director, Community Services Administration, Washington, D.C. 20506.

(1) Appeals from determinations made concerning regionally funded grants will be addressed to the Regional Director or the Regional Director's designee. Copies of all responses previously submitted by the grantee to the responsible CSA official and other pertinent information must accompany the appeal.

(2) The official reviewing the appeal, or the official's designee, shall consider the appeal, together with any comments submitted by cognizant offices of CSA (a copy of which shall be simultaneously sent to the grantee). In his/her discretion, the reviewing official may offer the grantee an informal hearing at which relevant CSA officials may also be heard. The decision on the appeal shall be final.

(e) *Satisfaction of final audit disallowances.* Unless the grantee receives

written notice from CSA granting an extension, all final disallowances shall be satisfied within ninety (90) days of the date on which the disallowance becomes final. Grantees shall satisfy final disallowance through cash payments to CSA unless they have received written notice allowing an alternative means of satisfaction. In some instances, grantees under Title II of the EOA may be permitted to satisfy disallowances through increases in the required non-Federal share in subsequent grants or contracts.

(1) Failure by the grantee to satisfy a final disallowance or take corrective action to remedy deficiencies in its accounting system and internal controls determined by CSA after audit may result in suspension, termination, or other remedial action. The United States reserves the right to bring suit or take other appropriate legal action to recover the amounts in question.

#### § 1068.42-9 Federal, State and local audits.

(a) *General.* Audits and examinations of grantee's operations may be conducted by CSA auditors, auditors from the staffs of other Federal agencies, State and local auditors, and the U.S. General Accounting Office. Grantees and delegate agencies must cooperate fully with General Accounting Office (GAO) and CSA auditors when they conduct audits and examinations of grant programs.

(b) *Audits and surveys by CSA.* CSA audits and surveys are designed to provide CSA management with information as to the effectiveness of administrative procedures and controls and to assist the grantee in improving program operations. As such, CSA audits usually supplement, but do not substitute for or duplicate, the work of the grantee's independent auditor.

(c) *Audits and surveys by other Federal agencies.* Grantees that have grants from or contracts with other Federal agencies such as the Department of Defense or Department of Health, Education, and Welfare may be subject to surveys and audits by those agencies. In these instances, the CSA Audit Division, if informed in advance, will try to arrange with the cognizant audit agency to have them

audit CSA programs concurrently with their audits of the grantees' other programs. Where such audits meet the requirement of this subpart and are performed in accordance with the Audit Guide, CSA will approve them as acceptable in lieu of an audit by the grantee's auditor.

(d) *Audits and surveys by state and local auditors.* Public grantees may be audited by State and local auditors. Audits performed by these auditors will be acceptable to CSA provided that the auditor has been approved by CSA pursuant to § 1068.42-6: Provided, That the auditor maintains the same standards, utilizes similar auditing procedures and qualified personnel, and renders a similar opinion and report as provided for in the Audit Guide. If for any reason the public agency is unable to apply auditing standards equal to those set out in the Audit Guide, an audit by an independent certified public accountant or an independent licensed public accountant will be required.

#### § 1068.42-10 Maintenance of records.

Grantees and delegate agencies must maintain appropriate records and accounts to assure a proper accounting for all project funds, both Federal and non-Federal. All financial records, including books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and other related documents must be retained for the time period and in the manner prescribed by CSA's policy retention and custodial requirements for records.

#### APPENDIX A TO SUBPART 1068.42—GRANTEE FISCAL RESPONSIBILITY AND AUDITING

Section 243 of the Economic Opportunity Act (EOA) of 1964, as amended, states that:

Section 243. "(a) No funds shall be released to any agency receiving financial assistance under this title until it has submitted to the Director a statement certifying that the assisted agency and its delegate agencies (or subcontractors for performance

of any major portion of the assisted program) have established an accounting system with internal controls adequate to safeguard their assets, check the accuracy and reliability of the accounting data, promote operating efficiency and encourage compliance with prescribed management policies and such additional fiscal responsibility and accounting requirements as the Director may establish. The statement may be furnished by a certified public accountant, a duly licensed public accountant or, in the case of a public agency, the appropriate public financial officer who accepts responsibility for providing required financial services to that agency."

Section 243 "(b) Within three months after the effective date of a grant to or contract of assistance with an organization or agency, the Director shall make or cause to be made a preliminary audit survey to review and evaluate the adequacy of the accounting system and internal controls established thereunder to meet the standards set forth in the statement referred to in subsection (a). Promptly after the completion of the survey, the Director shall determine on the basis of findings and conclusions resulting from the survey whether the accounting system and internal controls meet those standards and, if not, whether to suspend the grant or contract. In the event of suspension, the assisted agency shall be given not more than six months within which to establish the necessary systems and controls, and, in the event of failure to do so within such time period, the assistance shall be terminated by the Director."

Section 243 "(c) At least once annually the Director shall make or cause to be made an audit of each grant or contract of assistance under this title. Promptly after the completion of such audit, the Director shall determine on the basis of resulting findings and conclusions whether any of the costs of expenditures incurred shall be disallowed. In the event of disallowance, the Director may seek recovery of the sums involved by appropriate means, including court action or a commensurate increase in the required non-Federal share of the cost of any grant or contract with the same agency or organization which is then in effect or which is entered into within twelve months after the date of disallowance."

Section 243 "(d) The Director shall establish such other requirements and take such actions as the Director may deem necessary and appropriate to carry out the provisions of this section and to insure fiscal responsibility and accountability, and the effective and efficient handling of funds in connection with programs assisted under this title. These requirements and actions shall include (1) necessary action to assure that the rate of expenditure of any agency receiving financial assistance does not exceed the rate

contemplated under its approved program; and (2) appropriate requirements to promote the continuity and coordination of all projects or components of programs receiving financial assistance under this title, including provision for the periodic reprogramming and supplementation of assistance previously provided."

#### APPENDIX B TO SUBPART 1068.42— GRANTEE FISCAL RESPONSIBILITY AND AUDITING

Statement to be submitted by the appropriate public financial officer when the applicant is a public agency or when the accounting system of a private-nonprofit agency will be maintained by public agency.

*(Address of Regional or Program office of the Community Services Administration, as appropriate.)*

Dear Sirs:

I am the chief financial officer of (*name of public body*) and, in this capacity, I will be responsible for providing financial services adequate to insure the establishment and maintenance of an accounting system for the (*name of applicant*), which is a public (*or non-profit*) agency charged with carrying out a CSA program in (*name of community*). The accounting system will have internal controls adequate to safeguard the assets of such agency(ies), check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency(ies).

\_\_\_\_\_  
Signature of financial officer

\_\_\_\_\_  
Name of financial officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of public body

#### APPENDIX C TO SUBPART 1068.42— GRANTEE FISCAL RESPONSIBILITY AND AUDITING

Statement to be submitted when applicant is a private-nonprofit agency (or a public agency) whose accounting system will not be maintained by a public agency.

*(Address of Regional or program office of the Community Services Administration, as appropriate.)*

Dear Sirs:

I am a certified or duly licensed public accountant and have been engaged to examine and report on the financial accounts of the



(*name of applicant*), which is a private-non-profit organization (*or public agency*) carrying out a CSA program in (*name of community*). I have reviewed the accounting system that this agency has established and, in my opinion, it includes internal controls adequate to safeguard the assets of the agency, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage compliance with prescribed management policies of the agency.

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Signature of accountant

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Name of accountant

-----  
Name of firm

### **Subpart 1068.43—Grantee Fiscal Responsibility and Auditing (CSA Instruction 6801-1 Change 2)**

**AUTHORITY:** Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

**SOURCE:** 44 FR 56572, Oct. 1, 1979, unless otherwise noted.

#### **§ 1068.43-1 Applicability.**

This subpart applies to all grantees financially assisted under Titles II, IV, and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

#### **§ 1068.43-2 Effective date.**

August 31, 1971 (CSA Instruction 6801-1, Change 2).

#### **§ 1068.43-3 Purpose.**

CSA Instruction 6801-1, now Subpart 1068.42 of this chapter, provides that grantees must have one annual audit which must cover all CSA-funded programs. This subpart clarifies the period of time to be covered by the annual audit in those cases where grantees have received funds from more than one funding office within CSA and the authorized period for expending the funds is not consistent with the grantee's program year.

#### **§ 1068.43-4 Definition.**

"A Program Year" means a grantee's 12-month accounting period. For community action agencies this is the funding period for the principal grant that provides funds for most of the

grantee's administrative costs. For other agencies funded by CSA this is their usual 12-month accounting period which may or may not correspond with the funding period of their grant(s) from CSA. It should be noted that CSA no longer identifies grantee program years by an alphabetic designator, that is; Program Year A, Program Year B, but is instead awarding funds and identifies grantee expenditures by use of an individual grantee number.

#### **§ 1068.43-5 Policy.**

(a) The period of audit coverage will be the grantee's 12-month program year. In cases where CSA program offices award funds for periods that do not coincide with the grantee's program year, the audit will also cover the portion of these funds that were expended during the grantee's program year. Subsequent annual audits will cover the balance of these funds.

(b) An example of the funding actions to be included in the scope of a grantee's annual audit is:

(1) Grantee A had a program year that ended on December 31, 1972, and has funds from three CSA offices, as follows:

(i) Grant #50100, action 01, funded by the Regional Office for the program year January 1, 1972 to December 31, 1972.

(ii) Grant #50100, action 02, funded by the Regional Office for the period from March 1, 1972 to June 30, 1972.

(iii) Grant #50100, action 01, funded by the Office of Program Development for the grant period May 1, 1972 to October 31, 1973.

(2) Grant #50100 funded by the Regional Office for the grantee's program year is the principal grant under which the grantee operates. The program year of this grant determines the period of audit coverage for the annual audit. The grantee contracts with its Certified Public Accountants (CPA's) to perform an annual audit and provide one report covering the following funding actions:

(i) Grant #50100, action 01 (Regional) would be reported for the program year January 1, 1972 to December 31, 1972.

(ii) Grant #50100, action 01 (Regional) would cover transactions during the period March 1, 1972 to December 12, 1972.

(iii) Grant #50100, action 01 (Headquarters) would cover transactions during May 1, 1972 to December 31, 1972.

(3) The following year's annual audit would provide coverage as follows:

(i) Grant #50100, action 01 (Regional) would be reported for the program year January 1, 1973 to December 31, 1973.

(ii) Grant #50100, action 02 (Regional) would cover transactions during the period January 1, 1973 to June 30, 1973. If this program were refunded, the report would also cover transactions during the period July 1, 1973 to December 31, 1973.

(iii) Grant #50100, action 01 (Headquarters) would cover transactions during the period January 1, 1973 to October 31, 1973. If this program is extended or refunded, the period of audit coverage would cover the period through December 31, 1973.

(c) CSA programs that were not included in the scope of the grantee's last audit of its principal grant before January 1, 1972 because of different funding periods should be audited at the end of the funding period even though this occurs after January 1, 1972 but on a one time basis only. Thereafter, these programs should be included in the first complete audit after January 1, 1972, based on the grantee's program year.

**§ 1068.43-6 Grantees with predetermined fiscal year.**

(a) Exceptions to the above criteria for determining the period of coverage of the annual audit will be made for those grantees who, prior to receiving funds from CSA, had a fiscal year or 12-month operating period which does not correspond to the program year or funding period under which CSA grants have been awarded and which elect to use such predetermined fiscal year for this purpose.

(b) Since it is CSA's intention to reduce problems associated with the scheduling of annual audits covering programs with varying refunding or termination dates, grantees who wish

to exercise this exception should write or contact the CSA Regional Auditor servicing the geographic area in which they are located.

(c) The Regional Auditor will coordinate the grantee's request to change the annual audit report to the organization's fiscal year with the CSA program offices funding the grantee.

(d) Grantees may change the period of audit coverage only after they have received the written approval of the CSA Regional Auditor. The Regional Auditor will also indicate to the grantee what audit coverage is to be provided during the conversion process.

**§ 1068.43-7 Changes to CSA guidance.**

Amendments to CSA Manual 2410-1 (the Audit Guide) will be forthcoming to reflect the changes to financial statements to be included in annual audit reports as a result of this subpart.

**Subpart 1068.50—Cost Principles**

**AUTHORITY:** Sec. 602, 78 Stat. 530, (42 U.S.C. 2942).

**SOURCE:** 45 FR 64940, Oct. 1, 1980, unless otherwise noted.

**§ 1068.50-1 Applicability.**

The provisions of OMB Circular A-21, Cost Principles for Educational Institutions, OMB Circular A-122, Cost Principles for Nonprofit Organizations and Circular 74-4, Cost Principles applicable to Grants and Contracts with State and Local Governments, are applicable to all grants and agreements made under the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration. All subawards (delegate agency agreements, subcontracts, etc.) are subject to those cost principles applicable to the particular organization concerned, e.g. if a nonprofit grantee enters into a delegate agency agreement with a nonprofit organization Circular A-122 shall apply; however, if that same grantee contracts with a college or university, Circular A-21 shall apply.

**§ 1068.50-2 Purpose.**

The purpose of this subpart is to implement the cost principles pursuant to OMB Circulars A-122, A-21, and 74-4 by advising organizations, agencies, units of government and educational institutions funded by CSA of their applicability and to incorporate Circular A-122 into CSA's body of published regulations in order to assure that it is readily accessible to nonprofit organizations. Circulars A-21 and 74-4 may be obtained by writing to the Office of Administration, Publications Unit, Room G-236, New Executive Office Building, Washington, D.C. 20503.

**§ 1068.50-3 Implementation date.**

The provisions of these Circulars are effective as of [30 days following publication in the *FEDERAL REGISTER*.] However, if an organization has an existing award as of [30 days following publication in the *FEDERAL REGISTER*] and does not wish to be governed by these cost principles while under this award, that organization will so inform the CSA Regional or Headquarters office responsible for administering the grant. In such a situation the organization will continue to be bound for the remainder of the funding period by those regulations superseded by the cost principles. However, the cost principles will apply at the start of the next award made to that organization.

**§ 1068.50-4 Supersession.**

The cost principles published in OMB Circulars A-21, A-122, and 74-4 supersede cost principles previously issued by CSA except those cost principles which have been legislatively mandated.

**APPENDIX TO SUBPART 1068.50—OMB  
CIRCULAR A-122, COST PRINCIPLES  
FOR NONPROFIT ORGANIZATIONS**

[CIRCULAR NO. A-122]

June 27, 1980.

To The Heads of Executive Departments and Establishments

Subject: Cost principles for nonprofit organizations.

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with nonprofit

organizations. It does not apply to colleges and universities which are covered by Circular A-21; State, local, and federally recognized Indian tribal governments which are covered by Circular 74-4; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by individual agencies for nonprofit organization.

3. *Applicability.* a. These principles shall be used by all Federal agencies in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a nonprofit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a State, local, or federally recognized Indian tribal government, Circular 74-4 shall apply.

4. *Definitions.* a. "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "nonprofit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally recognized Indian tribal governments; and (iv) those nonprofit organizations which are excluded from coverage of this Circular in accordance with paragraph 5 below.

b. "Prior approval" means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in



## Appendix

writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some nonprofit organizations.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such nonprofit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to nonprofit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to the Office of Management and Budget. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to the Office of Management and Budget within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles

Attachment B—Selected Items of Cost

Attachment C—Nonprofit Organizations Not Subject to This Circular

8. *Requests for exceptions.* The Office of Management and Budget may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions is also permitted by mutual agreement between an organization and the cognizant Federal agency. [CSA funded organizations please note implementation dates in § 1068.50-31.]

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-4773.

James T. McIntyre, Jr.,  
Director.

[Circular No. A-122]

## Title 45—Public Welfare

### ATTACHMENT A

#### GENERAL PRINCIPLES

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[Circular No. A-122]

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### ATTACHMENT B

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- [Circular No. A-122]

## ATTACHMENT B

## SELECTED ITEMS OF COST

Paragraphs 1 through 50 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. *Advertising costs.*

a. Advertising costs mean the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The only advertising costs allowable are those which are solely for (i) the recruitment of personnel when considered in conjunction with all other recruitment costs, as set forth in paragraph 40; (ii) the procurement of goods and services; (iii) the disposal of surplus materials acquired in the performance of the award except when organizations are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110; or (iv) specific requirements of the award.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

3. *Bid and proposal costs.* (reserved)

4. *Bonding costs.*

a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radio-grams, postage and the like, are allowable.

6. *Compensation for personal services.*

a. *Definition.* Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in paragraph g. below). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability.* Except as otherwise specifically provided in this paragraph the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Government, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in Government-sponsored activities and in cases where the kind of employees required for the Government activities are not found in the organization's other activities, compensation for employees on Government-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in

the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

e. *Unallowable costs.* Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see paragraph g. below), and the like, are allowable provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workmen's compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured li-

abilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workmen's compensation such payments are allowable in the year of payment with the prior approval of the awarding agency provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Pension plan costs.*

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination Insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under the Employee Retirement Income Security Act are unallowable.

h. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into a good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization



so consistently as to imply, in effect, an agreement to make such payment.

i. *Overtime, extra pay shift, and multishift premiums.* See paragraph 27.

j. *Severance pay.* See paragraph 44.

k. *Training and education costs.* See paragraph 48.

l. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct cost or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports as prescribed in subparagraph (2) below, except when a substitute system has been approved in writing by the cognizant agency. (See paragraph E.2 of Attachment A)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by nonprofit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2) above, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair

Labor Standards Act (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under the Fair Labor Standards Act.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

7. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see paragraph 6f.(3) and 18.a.(2)(d)); pension funds (see paragraph 6.(g)); and reserves for normal severance pay (see paragraph 44.(b)(1)).

8. *Contributions.* Contributions and donations by the organization to others are unallowable.

9. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in paragraph f. below a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the asset involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude.

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching retirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system,

heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under paragraph e. above, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency

due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

#### 10. Donations.

##### a. Services received.

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Attachment E, OMB Circular No. A-110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in the other activities of the organization, the rates used shall be consistent with those

paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a) above.

**b. Goods and space.**

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Attachment E, OMB Circular No. A-110. The value of the donations shall be determined in accordance with Attachment E. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

11. *Employee morale, health, and welfare, costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonies, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 11 and 25).

13. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. An organization may use its own definition provided that it at least includes all nonexpendable tangible personal property as defined herein.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, in-

cluding the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) "Special purpose equipment" means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs provided that items with a unit cost of \$1000 or more have the prior approval of the awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 9 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 42 for allowability of rental costs for land, buildings, and equipment.

14. *Fines and penalties.* Cost of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

15. *Fringe benefits.* See paragraph 6. f.

16. *Idle facilities and idle capacity.*

a. As used in this paragraph the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible



capital asset, wherever located, and whether owned or leased by the organization.

(2) "Idle facilities" means completely unused facilities that are excess to the organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 per cent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multishift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are unnecessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see paragraphs 47.b. and d.).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

17. *Independent research and development* [Reserved].

18. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which repre-

sents fringe benefits for employees (see paragraph 6.f. and 6.g.(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations.

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Government property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(e) Costs of Insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see paragraph 6). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the organization only to the extent expressly provided in the award.

19. *Interest, fund raising, and investment management costs.*

a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph B of Attachment A.

20. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

21. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any underrecoveries through negotiation of lump sums for, or ceilings on, indirect costs.

22. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 13).

23. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

24. *Meetings, conferences.*

a. Costs associated with the conduct of meetings, and conferences, and include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 12, *Entertainment costs*, and paragraph 29, *Participant support costs*.

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective. (See

paragraph B. of Attachment A.) These costs are allowable provided that they meet the general tests of allowable, shown in Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

25. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the organization's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of attendance at meetings and conferences, sponsored by others when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, and other items incidental to such attendance.

26. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

27. *Overtime, extra-pay shift, and multi-shift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Government will result.

28. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by Government-sponsored authors.

29. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings,

conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

**30. Patent costs.**

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Government to be conveyed to the Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 34).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Government, are unallowable (also see paragraph 43).

**31. Pension plans.** See paragraph 6. g.

**32. Plant security costs.** Necessary expenses incurred to comply with Government security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

**33. Preaward costs.** Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

**34. Professional service costs.**

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to b, c, and d, of this paragraph when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Government awards.

(4) The impact of Government awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Government work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Government awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in paragraph b above, retainer fees to the allowable must be supported by evidence of bona fide services available or rendered.

d. Cost of legal, accounting, and consulting services, and related costs incurred in connection with defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, organization and reorganization, are unallowable unless otherwise provided for in the award (but see paragraph 47e).

**35. Profits and losses on disposition of depreciable property or other capital assets.**

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 9.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.



(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 18.a.(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph a. above shall be excluded in computing award costs.

**36. Public information service costs.**

a. Public information service costs include the cost associated with pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(1) Inform or instruct individuals, groups, or the general public.

(2) Interest individuals or groups in participating in a service program of the organization.

(3) Disseminate the results of sponsored and nonsponsored activities.

b. Public information service costs are allowable as direct costs with the prior approval of the awarding agency. Such costs are unallowable as indirect costs.

**37. Publication and printing costs.**

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed paragraph 28.

**38. Rearrangement and alteration costs.**

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

**39. Reconversion costs.** Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Government awards, fair wear and tear excepted, are allowable.

**40. Recruiting costs.** The following recruiting costs are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating an educational testing program, travel expenses including food and lodging of em-

ployees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees (see paragraph 41c). Where the organization uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

**41. Relocation costs.**

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in paragraphs b, c, and d, below, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimate) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4) below, are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of cancelling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of paragraph b. above. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the

employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

#### 42. Rental costs.

a. Subject to the limitations described in paragraphs b. through d. of this paragraph, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which create a material equity in the leased property are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed; e.g. depreciation or use allowances, maintenance, taxes, insurance but excluding interest expense and other unallowable costs. For this purpose, a material equity in the property exists if the lease is noncancelable or is cancelable only upon the occurrence of some remote contingency and has one or more of the following characteristics:

(1) The organization has the right to purchase the property for a price which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option);

(2) Title to the property passes to the organization at some time during or after the lease period;

(3) The term of the lease (initial term plus periods covered by bargain renewal options, if any) is equal to 75 percent or more of the economic life of the leased property; i.e., the period the property is expected to be economically usable by one or more users.

#### 43. Royalties and other costs for use of patents and copyrights.

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

#### 44. Severance pay.

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

**45. Specialized service facilities.**

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable provided the charges for the services meet the conditions of either b. or c. of this paragraph and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under paragraph A.5. of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to paragraph A.6. of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

**46. Taxes.**

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Government.

**47. Termination costs.** Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization



makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default. (See paragraph 4.a. of Attachment I, OMB Circular No. A-110; and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced for the award; except when grantees are reimbursed for disposals at a predetermined amount in accordance with Attachment N of OMB Circular A-110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2) of this paragraph. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractor/subgrantees; provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

#### 48. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or postgraduate college level, including that provided at the organiza-

tion's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charged by the educational institution.

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in b. and c. above.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 9, 22, and 42.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under paragraphs b. and c. of this paragraph may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

49. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 23). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

50. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to paragraphs b. through e. below, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 40 and 41, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

[Circular No. A-122]

ATTACHMENT C

NONPROFIT ORGANIZATIONS NOT SUBJECT TO THIS CIRCULAR

Aerospace Corporation, El Segundo, California  
 Argonne Universities Association, Chicago, Illinois  
 Associated Universities, Incorporated, Washington, D.C.  
 Associated Universities for Research and Astronomy, Tucson, Arizona  
 Atomic Casualty Commission, Washington, D.C.  
 Battelle Memorial Institute, Headquartered in Columbus, Ohio  
 Brookhaven National Laboratory, Upton, New York  
 Center for Energy and Environmental Research (CEER), (University of Puerto Rico)  
 Commonwealth of Puerto Rico, Charles Stark Draper Laboratory, Incorporated Cambridge, Massachusetts, Comparative Animal Research Laboratory (CARL) (University of Tennessee), Oak Ridge, Tennessee  
 Environmental Institute of Michigan, Ann Arbor, Michigan  
 Hanford Environmental Health Foundation, Richland, Washington  
 IIT Research Institute, Chicago, Illinois  
 Institute for Defense Analysis, Arlington, Virginia  
 Institute of Gas Technology, Chicago, Illinois  
 Midwest Research Institute, Headquartered in Kansas City, Missouri  
 Mitre Corporation, Bedford, Massachusetts  
 Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana  
 National Radiological Astronomy Observatory, Green Bank, West Virginia  
 Oak Ridge Associated Universities, Oak Ridge, Tennessee  
 Project Management Corporation, Oak Ridge, Tennessee  
 Rand Corporation, Santa Monica, California  
 Research Triangle Institute, Research Triangle Park, North Carolina

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Riverside Research Institute, New York, New York  
Sandia Corporation, Albuquerque, New Mexico  
Southern Research Institute, Birmingham, Alabama  
Southwest Research Institute, San Antonio, Texas  
SRI International, Menlo Park, California  
Syracuse Research Corporation, Syracuse, New York  
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois  
Universities Corporation for Atmospheric Research, Boulder, Colorado  
Nonprofit Insurance Companies such as Blue Cross and Blue Shield Organizations  
Other nonprofit organizations as negotiated with awarding agencies.

### PART 1069—GRANTEE PERSONNEL MANAGEMENT

#### Subpart 1069.1—Employee Participation in Direct Action (CSA Instruction 6907-3)

Sec.

- 1069.1-1 Applicability of this subpart.
- 1069.1-2 Definition of "direct action".
- 1069.1-3 Policy.
- 1069.1-4 Permissible direct action.
- 1069.1-5 Unallowable direct action.
- 1069.1-6 Distinction between staff actions and private actions of employees.
- 1069.1-7 Responsibilities of community action agencies.
- 1069.1-8 Enforcement.

#### Subpart 1069.2—Limitations With Respect to Unlawful Demonstrations, Rioting and Civil Disturbances (CSA Instruction 6907-2)

- 1069.2-1 Applicability of this subpart.
- 1069.2-2 Policy.
- 1069.2-3 Enforcement.
- 1069.2-4 Reminder concerning antiriot provision in the Economic Opportunity Amendments of 1966.

#### Subpart 1069.6—Policy Guidance on Lobbying Activities (OEO Instruction 6907-01)

- 1069.6-1 Applicability of this subpart.
- 1069.6-2 Purpose of this subpart.
- 1069.6-3 Effective date.

#### Subpart 1069.8—Restrictions on Political Activity (CSA Instruction 6907-1a)

- 1069.8-1 Applicability.
- 1069.8-2 Definitions.

## Title 45—Public Welfare

Sec.

- 1069.8-3 Policy.
- 1069.8-4 Requirement that community action agencies adopt rules.
- 1069.8-5 Restrictions on political activities of all CSA grantees and delegate agencies.
- 1069.8-6 Additional restrictions on political activities of employees of CAAs, public grantees, and public delegate agencies.
- 1069.8-7 Additional precautions.
- 1069.8-8 Enforcement.

APPENDIX A

APPENDIX B

#### Subpart 1069.9—Policy and Procedures on \$18,000 Per Year Salary Limitation (CSA Instruction 6903-1a)

- 1069.9-1 Applicability.
- 1069.9-2 Reference.
- 1069.9-3 Definitions.
- 1069.9-4 Policy.
- 1069.9-5 Clarification of effect of \$18,000 limitation.
- 1069.9-6 Criteria and procedures for CSA exceptions to \$18,000 limitation.

#### Subpart 1069.26—Social Security Coverage for Employees Under CAP Grants (CSA Instruction 6906-01)

- 1069.26-1 Applicability.
- 1069.26-2 Effective date.
- 1069.26-3 Purpose.
- 1069.26-4 Identification of employer for social security purposes.
- 1069.26-5 Where the employer is a private nonprofit organization.
- 1069.26-6 State or local governmental agency as employer.
- 1069.26-7 Indian Tribal Council or similar tribal organization as employer.

#### Subpart 1069.28—Prohibition Against Acceptance of Gifts and Gratuities (CSA Instruction 6909-1)

- 1069.28-1 Applicability.
- 1069.28-2 Effective date.
- 1069.28-3 Definition.
- 1069.28-4 Policy.

#### Subpart 1069.1—Employee Participation in Direct Action (CSA Instruction 6907-3)

AUTHORITY: Sec. 213, 81 Stat. 695; 42 U.S.C. 2796.

SOURCE: 33 FR 16567, Nov. 14, 1968, unless otherwise noted.



**§ 1069.1-1 Applicability of this subpart.**

This subpart applies to all full-time and part-time employees and volunteers of grantees and delegate agencies while engaged in carrying out a program financially assisted under the provisions of Title II or III-B of the Economic Opportunity Act of 1964, as amended.

**§ 1069.1-2 Definition of "direct action."**

As used in this subpart, "direct action" means a group activity designed to communicate collective grievances and to request decision or remedial action—e.g. picketing, parades or marches, sit-ins, rallies, or assemblies.

**NOTE:** The above is a definition of all direct action, including forms of direct action which are legal and are permissible under this subpart.

**§ 1069.1-3 Policy.**

(a) One of the premises of the Community Action Program is that poverty can be overcome as the poor gain the capability to play an effective role in the community processes which so vitally affect them. Maximum feasible participation of the poor is both a mandate of the Economic Opportunity Act and a focal point of OEO policy. The community action agency's duties of advocacy on behalf of the poor stem from those factors.

(b) In the course of carrying out their advocacy responsibilities, community action agencies may sometimes determine that the best available (or the only apparent) means for self-help involvement of the poor lead to such direct action activities as peaceful and lawful assembly to obtain redress of grievances from those believed capable of alleviating them.

(c) However, to recognize the legitimacy and importance of direct action is not to say that any and all direct action activities, under all circumstances, are either appropriate or desirable. Thus, employees and volunteers of community action agencies and other Title II and III-B grantees and delegate agencies are prohibited, in connection with the performance of their duties, from participating in, planning, or otherwise assisting in any unlawful picketing or protest or other

form of direct action which is unlawful. Community action grantees and delegate agencies have the responsibility of preventing such illegal actions on the part of their staff. Toleration by agency officials of such behavior may be considered cause for suspending or terminating the grant.

(d) The rules set forth in this subpart are not intended to represent a redirection of the Community Action Program or a change in its mission. It is very difficult to establish general rules which clearly distinguish between legal and illegal forms of direct action or which determine the extent and limits of an individual's responsibility when participating in a group activity during which some illegal acts are committed. The rules of this subpart are a general guide, but each agency will have to interpret the rules with good judgment and enforce them fairly and with full knowledge of the facts. Agencies should avoid an interpretation which in any way restricts constitutionally-protected activities or an individual's constitutional rights. Grantees and delegate agencies may consult the appropriate OEO Regional or Headquarters office for advice as to whether a certain activity would be permissible under this subpart. It is the primary responsibility of the local agency, however, to enforce this subpart in a manner which prevents illegal direct action but which also insures that community action, which encompasses a variety of legal direct action, is not stifled.

**§ 1069.1-4 Permissible direct action.**

(a) Lawful direct action is permissible, and often necessary, as an intermediate step in promoting institutional changes that can lead to permanent improvements in the community's efforts to eliminate the causes and consequences of poverty.

(b) Community action personnel must seek to channel feelings of frustration among the poor into constructive efforts that will improve their conditions without encouraging illegal or destructive actions. Community action agencies may play an effective role by bringing the needs, concerns and grievances of the poor to the at-

tention of responsible public and private officials or groups.

(c) Such forms of direct action as a public rally to demonstrate for the adoption of a more stringent housing code, picketing in support of sewage facilities in a poor neighborhood, or publicizing a selective buying campaign against merchants who discriminate may sometimes be necessary. However, such direct action must meet the following tests of permissibility in order for a community action employee or volunteer to participate while in performance of his duties:

(1) It must not be forbidden under § 1069.1-5.

(2) It must be directly related to the program objectives of the grantee or delegate agency.

(3) It must have been planned as a result of a decision by a neighborhood or other representative group or by program beneficiaries, not solely by staff workers. Direct action activities are a legitimate part of community action only to extent that they present a genuine expression of the needs, desires, and formulated demands of the neighborhood itself, determined in a democratic fashion after consideration of the ends to be achieved and of the advantages and disadvantages of the various alternative courses of action. In this process, program staff members can provide assistance and information but must not seek to impose their own views.

**§ 1069.1-5 Unallowable direct action.**

(a) No employee or volunteer engaged in carrying out the program of an agency financially assisted under Title II or III-B shall, while in performance of his duties:

(1) Plan, participate in, or provide assistance to others in carrying out any form of direct action which is in violation of Federal, State, or local law or an outstanding injunction of any Federal, State, or local court.

(2) Plan, participate in, or provide assistance to others in carrying out any form of direct action which is designed with the intent to involve physical violence, destruction of property, or physical injury to persons. On the contrary, local agency staff should affirmatively do what they can to pre-

vent such activities and to discourage any direct action that is violent in manner or purpose or is calculated to incite civil disorders.

(3) Commit any actions in connection with riots, political activity, or lobbying which are prohibited by Community Action Memo 66 or OEO Instructions 6907-1 or 6907-2.<sup>1</sup>

(b) Any employee who participated in a form of direct action which as planned and initially carried out is legal and permissible under § 1069.1-4, but during which some illegal acts are committed by individuals, is responsible only for his individual actions.

**§ 1069.1-6 Distinction between staff actions and private actions of employees.**

(a) Whether in a particular instance an employee may be considered to be acting in his capacity as a private citizen, and therefore to be generally exempt from the limitations of this subpart, depends less on the question of whether the person is formally on duty (i.e., whether the unlawful direct action takes place during his regular working hours), than on the question of the employee's relationship to the group which is engaged in the activity. Where this relationship is such that the participants or the public might reasonably conclude that he is acting as an employee (for example, because as part of his job he has been working with the participating group, or in the neighborhood with which they are identified), he should consider himself subject to the restrictions on involvement in illegal direct action; and any doubt should be resolved in this direction. This is so regardless of the time at which the event occurs, or whether the employee is, as a formal matter, on or off duty. It follows that no employee may avoid the limitations by simply taking leave time, or relying upon the fact that a given activity occurs in the evening or on a weekend.

(b) Although volunteers are not included in the discussion in paragraph (a) of this section, they must take reasonable precautions against identify-

<sup>1</sup>Not filed with the Office of the Federal Register.

ing their off-duty activities with a grantee or delegate agency.

**§ 1069.1-7 Responsibilities of community action agencies.**

(a) Section 213(a) of the Economic Opportunity Act requires each community action agency to adopt rules for itself and its delegate agencies which define staff responsibilities in regard to advocacy on behalf of the poor in such a way as to prohibit participation in unlawful direct action. This requirement will be considered to be met by the agency's adoption of the provisions of this subpart and by making these rules available to all employees in writing.

(b) If, however, the agency wishes to adopt its own rules it may do so, providing that the provisions of this subpart are included in those rules and that none of these provisions are contradicted by the agency's additional rules.

(c) In either case, the agency must specifically inform employees and volunteers of the provisions contained in such rules and of the possible sanctions for noncompliance.

**§ 1069.1-8 Enforcement.**

(a) The initial and primary responsibility for enforcement of this subpart in connection with projects assisted under Title II and III-B is with the local grantees and delegate agencies responsible for those projects. Each such agency will be expected to investigate and to take appropriate action in response to any specific information which comes to its attention concerning possible violation of the requirements of this subpart. Any personnel actions against employees resulting from such investigation are subject to the grievance procedures required under CA Memorandum 23-A<sup>1</sup> affording the employee a prompt and fair consideration of his grievance.

(b) Each grantee or delegate agency shall promptly inform the OEO Regional or appropriate grant approval office of any allegation charging a person within its jurisdiction with violating the provisions of this subpart

indicating the action that the agency is taking regarding the matter.

**Subpart 1069.2—Limitations With Respect to Unlawful Demonstrations, Rioting and Civil Disturbances (CSA Instruction 6907-2)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**§ 1069.2-1 Applicability of this subpart.**

This subpart applies to all full-time and part-time employees and volunteers engaged in carrying out the program of any organization financially assisted under the Economic Opportunity Act of 1964, as amended.

[33 FR 17143, Nov. 19, 1968]

**§ 1069.2-2 Policy.**

(a) Each grantee and delegate agency is required to take appropriate steps to insure that financial assistance under the Economic Opportunity Act is not employed to aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance. In particular, each agency must take such action as is appropriate in the light of local circumstances to insure that persons employed in connection with assisted programs, as well as volunteers, do not use their position in the program to plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance. Toleration on the part of agency officials of such behavior by their employees may be considered cause for suspending or terminating the grant.

(b) Rioting and similar violence are wholly inconsistent with the goals of community action. Not only do they undercut the effort to bring the poor into the mainstream of community life, but the harm they do falls most heavily on the poor.

(c) Community action agencies and other CAP grantees have additional responsibilities, however, beyond insuring that no one uses the program to foster violence. Because of its important role as a link between the poor and the public and private agencies which can help solve some of the problems of poverty, a community

<sup>1</sup>Not filed with Office of Federal Register.



action agency or other CAP grantee has an important role (1) in developing grievance-response mechanisms between residents of poor neighborhoods and local government agencies and other institutions, and (2) if violence should occur or be threatened, in opening channels of communication between the disaffected elements and the community leadership. The report of the National Advisory Commission on Civil Disorders cited several examples of constructive counterriot measures undertaken by community action agencies. In addition the Commission highlighted the significance of efforts to involve the poor through "maximum feasible participation" in program development and administration and in community decision-making as effective measures to counter the causes and symptoms of riots.

(d) The preceding subpart "Employee Participation in Direct Action," of this part discusses lawful demonstrations and other types of direct action in which CAP grantees may engage.

[33 FR 17143, Nov. 19, 1968]

**§ 1069.2-3 Enforcement.**

The initial and primary responsibility for enforcement of this subpart rests with local grantees and delegate agencies. Such agencies shall—

(a) Take all feasible measures to prevent the employment in their programs of persons who are likely to use their positions as agency employees to promote violence or unlawful disorder. This shall not be construed to prohibit automatically the hiring of persons with prior criminal records. Policies governing the hiring and rehabilitation of persons with prior conviction records are found in Community Action Memo 23-A.<sup>1</sup>

(b) Terminate any employee, or discontinue using the services of any volunteer, who the agency determines, on the basis of substantial and material evidence, has been using his position with the agency to promote violence or disorder. Such personnel actions are subject to the grievance procedures required under CA Memorandum 23-A<sup>1</sup>

<sup>1</sup>Not filed with Office of Federal Register.

affording the employee a prompt and fair consideration of his grievance.

[33 FR 17143, Nov. 19, 1968]

**§ 1069.2-4 Reminder concerning antiriot provision in the Economic Opportunity Amendments of 1966.**

Section 1201 of the Economic Opportunity Amendments of 1966 provides that no funds appropriated for the fiscal year 1967 could be used "to provide payments, assistance, or services, in any form, with respect to any individual who is convicted, in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons, found to be in violation of Federal, State, or local law designed to protect persons or property in the community concerned." This law continues to apply to the use of all funds granted during the fiscal year 1967 (July 1, 1966, to June 30, 1967). Note that it bars benefits to, as well as employment of, persons convicted of certain crimes in connection with riots and group disorders.

[33 FR 17143, Nov. 19, 1968]

**Subpart 1069.6—Policy Guidance on Lobbying Activities (CSA Instruction 6907-01)**

**AUTHORITY:** Sec. 602(n), 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 38 FR 6896, Mar. 14, 1973, unless otherwise noted. Redesignated at 38 FR 14172, May 30, 1973.

**§ 1069.6-1 Applicability of this subject.**

This subpart applies to all grants made under the authority of titles II, III-B and VII of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by OEO.

**§ 1069.6-2 Purpose of this subpart.**

Many of the problems which cause or aggravate poverty are bound up with harsh or outmoded laws. Others can be most effectively attacked by the passage of new legislation. Community action is thus inevitably concerned with the shape of the laws

which affect the poor. On the other hand, there are necessarily very sharp limitations on the use of project funds by grantee and delegate agencies to influence the passage or defeat of legislation. Moreover, there are certain kinds of lobbying which interfere with the work of legislatures and thus impair the basic processes of democratic self-government. The primary purpose of this support is to identify essential restrictions on lobbying activities by grantees and delegate agencies that receive OEO funds under titles II, III-B, and VII of the Economic Opportunity Act. The subpart also serves as a reminder that under Federal (and many State) tax laws, private nonprofit agencies may endanger their capacity to receive tax-deductible contributions if they engage in substantial lobbying activities.

(a) *Restrictions on lobbying with project funds.* Project funds may not be used to support any of the following:

(1) Any activity which is planned and carried out in such a manner as to disrupt the orderly conduct of business by Congress or any other legislative body. This includes, but is not limited to, any disruptive action carried on in the chambers of Congress or any other legislative body or in any capitol or legislative office building.

(2) Any demonstration, rally, picketing, or other form of direct action aimed at the family or home of a member of a legislative body for the purpose of influencing his actions as a member of that body.

(3) Any campaign of advertising carried on through commercial media for the purpose of influencing the passage or defeat of legislation.

(4) Any campaign of letter writing, of other mass communications, or of mass visits to individual members of Congress or State legislatures for the purpose of influencing the passage or defeat of legislation. This restriction does not prohibit purely informational and educational activities involving target areas and groups.

(5) Project funds may not be used to pay dues or to support any organization or group which devotes or contributes any of its resources from whatever source to any activity, the

purpose of which is to influence legislation or to politicize. For purposes of the above, the amount of resources devoted to such activity is immaterial.

These restrictions on use of project funds apply to Federal and matching non-Federal shares of approved program budgets under titles II, III-B and VII of the Economic Opportunity Act and include the use of equipment, material, and facilities and employee time and services which are either paid for with project funds or contributed to project funds. These restrictions are not intended to limit the rights of individuals to express their personal views on public issues so long as they do so in their capacity as private citizens rather than employees. Nor are they intended to limit the freedom of local agencies to express their views on legislation so long as project funds are not used in violation of the foregoing limitations.

(b) *Reminder concerning tax implications of lobbying.* Under Federal income, estate, and gift tax laws, gifts made to private nonprofit organizations which devote a substantial part of their activities to carrying on propaganda or other activities aimed at influencing legislation, are not considered tax deductible "charitable contributions." This applies not only to Federal and State legislation but also to the legislative actions of county and city councils and similar local bodies. Many State tax laws contain similar provisions.

(1) In view of these tax laws, private nonprofit grantee and delegate agencies should bear in mind that if they devote any substantial part of their activities to lobbying efforts, they may be endangering their ability to receive tax-deductible contributions. Such contributions may represent an important means of providing the non-Federal share required in programs assisted under sections 221 and 222(a) of the Economic Opportunity Act. They also enable many local agencies to carry out other programs of assistance to the poor, apart from the Act.

(2) There are no published rules defining what is meant under the Federal tax laws by the term "substantial" lobbying activities. In cases of doubt

local agencies should seek private tax counsel or contact the nearest field offices of the Internal Revenue Service and State tax authorities.

§ 1069.6-3 Effective date.

Section 1069.6-2(a)(5) is effective on April 13, 1973. The other portions of this subpart took effect on June 20, 1967.

[38 FR 14172, May 30, 1973, as amended at 38 FR 14260, May 31, 1973]

**Subpart 1069.8—Restrictions on Political Activities (CSA Instruction 6907-1a)**

**AUTHORITY:** 5 U.S.C. 1501-03, as amended by Pub. L. 93-443; 42 U.S.C. 2796, 2942(n), and 2943 (Secs. 213, 602(n), and 603 of the Community Services Act of 1974).

**SOURCE:** 41 FR 15009, Apr. 9, 1976, unless otherwise noted.

§ 1069.8-1 Applicability.

(a) This subpart is applicable to all grantees and delegate agencies funded under Titles II, III-B, and VII of the Community Services Act of 1974 when the assistance is administered by the Community Services Administration.

(b) **NOTE:** All grantees and delegate agencies are subject to §§ 1069.8-3, 1069.8-5, 1069.8-7 and 1069.8-8. Community Action Agencies (CAAs), whether public or private, are further subject to § 1069.8-4 and 1069.8-6. All other public grantees and all public delegate agencies are also further subject to § 1069.8-6. Furthermore, some restrictions apply only to employees of affected agencies, while others apply to board members and volunteers as well. The applicability of the different sections of this subpart to the various classes of agencies and persons is presented graphically in Appendix B to this subpart, as well as summarized at the beginning of each section.

§ 1069.8-2 Definitions.

(a) *Public Agency.* The executive or legislative branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof.

(b) *Delegate agency.* An agency to which a grantee delegates the per-

formance of an entire program account of a grant or a substantial part of a single program account. Venture subsidiaries of community development corporations (CDCs) or agencies receiving only Investment Capital funds (cost category 2.5) from a CDC are *not* considered delegate agencies.

(c) *Educational or research organization.* A private or public educational institution, establishment, agency, or system supported in whole or in part by State or local public funds or by a recognized religious, philanthropic, or cultural organization. CAAs are *not* considered educational or research organizations.

(d) *Employee.* A *paid* employee, including (unless otherwise specified) trainees and enrollees.

(e) *Board member.* A member of a governing board, administering board, or advisory board or committee.

§ 1069.8-3 Policy.

(a) Grantee and delegate agencies must administer CSA-assisted programs in a politically nonpartisan manner, and must avoid actions which can reasonably be construed as intended to favor one political party over another or to influence the outcome of any election for public or party office. The use of program funds, the provision of services and the assignment of personnel must not result in the identification of the program with any partisan political activity or with any nonpartisan political activity which is designed to further the election or defeat of a candidate for public or party office. In addition, grantee and delegate agencies may not use program funds, the provision of services, or the assignment of personnel in connection with voter registration activity or with transporting voters or potential voters to the polls.

(b) Anti-poverty programs are, in many communities, live political issues and will often include activities which may become the subject of political controversy. Grantee and delegate agencies may, of course, undertake activities dealing with issues related to their basic program responsibilities. In carrying out their basic mission and goals grantees and delegate agencies



may actively engage in campaigns connected with constitutional amendments, referenda, municipal ordinances, law reform and lawful attempts to influence government officials to respond to the grievances of the poor. Grantee and delegate agencies need not avoid such activities merely because partisan officials or candidates for public office may take or have taken positions with respect to the issue. Agency officials acting in their official capacities must, however, deal with questions which have become a subject of political controversy on their merits and not in terms of whether they are supported or opposed by a particular party or candidate.

(c) Except as provided in this subpart, employees of grantees and delegate agencies are free to engage in various kinds of political activities during their off-duty hours and in their private capacities. A broad range of participation in elections is permitted. All employees are expected, however, to avoid (to the greatest extent possible) any identification of their off-duty activities with the CSA-supported program.

**§ 1069.8-4 Requirement that community action agencies adopt rules.**

(a) Section 213(a) of the Community Services Act requires each community action agency (CAA) to adopt rules designed to assure that its programs and programs of its delegate agencies are conducted in a manner which is free from any taint of partisan political bias. This requirement will be considered to be met by the agency's adoption of the provisions of this subpart and by making these rules available to all employees in writing.

(b) If, however, the agency wishes to adopt its own rules it may do so, providing that the provisions of this subpart are included in those rules and that none of these provisions are contradicted by the agency's additional rules.

**§ 1069.8-5 Restrictions on political activities of all CSA grantees and delegate agencies.**

(a) This section of this subpart contains categories of restrictions applied

by the Community Services Act and by Chapter 15, Title 5 of the United States Code (formerly known as the Hatch Act). These restrictions apply to all grantees and all delegate agencies (except educational and research organizations; see § 1069.8-5(c)), whether they are public or private, or whether they are CAAs or other agencies.

(b) These restrictions apply to the use of program funds, the provision of services, and the assignment of agency personnel in a manner which identifies the program with partisan political activity, nonpartisan activity associated with a candidate or faction in an election for public office, voter registration activity, and the transportation of voters to the polls. These restrictions are, in a broad sense, designed to prohibit the use of CSA funds for certain purposes. They apply to all grantee and delegate agency personnel. Insofar as the individual employee is concerned, however, these restrictions deal only with what he or she does as an employee.

(c) Prohibited political activity.<sup>1</sup> The following restrictions apply to all employees, volunteers, and board members, except that restrictions (1) and (2) do not apply to employees of educational or research organizations. Employees, volunteers, and board members may not:

(1) Use their official position, authority, or influence with the agency for the purpose of interfering with or affecting the result of an election or a nomination for a party or public office.

(2) Directly or indirectly coerce, attempt to coerce, command or advise an employee or any other person who is subject to these restrictions to pay, lend, or contribute anything of value

<sup>1</sup>Restrictions (1) and (2) are imposed on employees of all grantees and delegate agencies except educational and research organizations by Section 603(a) of the Community Services Act and Chapter 15, Title 5 of the U.S. Code. They are extended to volunteers and board members by CSA to implement the provisions of Section 603(b) of the Community Services Act. Restrictions (3) through (6) implement Sections 603(b) and 613 of the Community Services Act.

or to contribute personal services to a party, committee, organization, agency or person for political purposes.

(3) Use program funds for any political purposes or to influence any election for public or party office.

(4) Permit the use of equipment or premises purchased or leased with program funds for any political purpose or to influence outcome of any election for public or party office. This restriction applies only to facilities when under the control of the grantee or delegate agency. For example, if an agency leases a facility during certain hours only, the landlord may of course use the facility as he wishes during other hours.

(5) Discriminate, or threaten or promise discrimination, against or in favor of any employee or beneficiary of the program, or any potential employee or beneficiary, because of his political affiliations or beliefs, or require any applicant, employee or beneficiary to disclose his political affiliation.

(6) Offer any person employment, promotion or benefits under the program as a reward for the support or defeat of any political party or candidate for public or party office, or threaten or create disadvantage in employment or deprivation of benefits as a penalty for such support, except that such a person may be deprived of employment or subject to lesser penalties for engaging in activities which are forbidden by this subpart.

(d) Voter registration and transportation activity.<sup>2</sup> (1) Employees and volunteers of all grantees and delegate agencies may not, *while carrying out the program of their agencies*, engage in voter registration activity or in transporting voters or prospective voters to the polls. (Board members are not included in this restriction.) This restriction applies to the use of program funds, agency facilities or equipment, as well as to the provision of services and the assignment of personnel. All persons may participate in voter registration during their off-duty hours, so long as they avoid iden-

tification of such off-duty activities with the CSA-supported program.

(2) A grantee or delegate agency may properly conduct a citizenship education program which includes, as part of the curriculum, information about the mechanics and function of voter registration. Such a program may be valuable in educating the poor as to the legitimate and constructive roles they as citizens may play in local community life and in the American democratic process. However, the program must be informational and not designed to solicit registration. Furthermore, program funds may not be used in any way to aid registration campaigns. Door-to-door solicitations and mass mailing campaigns, for example, may not be undertaken or supported with program funds.

(e) Deduction of contributions to political activities from employees' paychecks. Experience has shown that the deduction of contributions for political purposes by grantees from employees' paychecks has often resulted in complaints that such contributions were not voluntary. Even when no overt coercion exists, employees may be under implicit pressure to allow such deductions if the activity in question is one with strong support from their superiors. Therefore, beginning with the effective date of this subpart, no contribution may be collected for any political activity through any deduction from the paycheck of an employee of any grantee, if that employee is paid with CSA funds. This prohibition does not extend to other methods of soliciting and collecting such contributions, provided they are lawful and not contrary to other provisions of this or any other CSA regulation.

(f) Candidates' meetings. Candidates' meetings, even if all rival candidates for one or more public offices appear, shall not be sponsored or conducted with program funds or facilities. This restriction on use of program funds does not, however, limit the rights of employees, volunteers, or board members to participate in candidates' meetings, subject to the restrictions in § 1069.8-5(c) above.

<sup>2</sup>The restrictions on voter registration and transportation activity are imposed pursuant to section 603(b) of the Community Services Act of 1974.

NOTE: For an interpretation document affecting paragraph (e), see 42 FR 57693, Nov. 4, 1977.

**§ 1069.8-6 Additional restrictions on political activities of employees of CAAs, public grantees, and public delegate agencies.**

(a) This section of this subpart contains additional restrictions applied by Section 603(a) of the Community Services Act and by Chapter 15, Title 5 of the United States Code. These restrictions apply to *all* CAAs (whether public or private), public grantees, and public delegate agencies, *except* educational or research organizations. They do *not* apply to private grantees other than CAAs or to private delegate agencies.

(b) These additional restrictions apply, subject to the provisions of paragraph (b)(1) of this section, only to *employees* of the agencies covered by this section. Volunteers and board members are *not* subject to these restrictions.

(1) *Employees to whom this section applies.* (i) *Employees of all federally assisted programs covered.* This section applies to all employees of CAAs and other public agencies who perform duties in connection with federally-assisted programs administered by that agency, even if the program is assisted by a Federal agency *other than* CSA. Employees performing duties in connection with programs financed by non-Federal sources are not covered.

(ii) *Principal employment rule.* This section applies to an employee who holds more than one job provided that his principal job—that is, the job on which he spends the majority of his work time and from which he derives the majority of his earned income—is covered by this section.

(iii) *Employees on leave still covered.* This section applies to employees even though they are on leave, with or without pay. The prohibitions are lifted only when the employment is terminated. However, if any employee is on terminal leave, he is not subject to the restrictions during the period for which he has received a lump-sum leave payment.

(iv) *Only certain trainees covered.* Trainees and enrollees shall be

deemed employees for purposes of this section only if they are engaged in on-the-job training for a position as an employee of the CAA, public grantee, or public delegate agency.

(2) *Prohibited political activity.* <sup>1</sup>An employee covered by this section is not permitted to be a candidate for public elective office, except that nonpartisan candidacies and candidacy for political party office are permitted, as set out in § 1069.8-6(b)(3)(ii) of this subpart. Thus no employee covered by this section may run in a primary or general election for public office, except as provided below in § 1069.8-6(b)(3)(ii) of this subpart. An employee planning to be a candidate for partisan public elective office should resign his or her position prior to announcement of his or her candidacy or commencement of substantial activities intended directly to promote said candidacy, whichever occurs first.

(3) *Permitted activities while off-duty.* (i) Most political activities are permitted to covered employees on their own time; however, they should be alert to avoid activities which may violate 5(c) of this subpart.

(ii) *Permitted activities while off-duty* include, but are not limited to:

(A) Being a nonpartisan candidate, as defined in 5 U.S.C. 1503: "Being a candidate in any election if none of the candidates to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected."

(B) Being a candidate for political party office even where such office is attained through election in a partisan primary election.

(C) Soliciting or handling political contributions from other than employees covered by this section or other persons associated with, or receiving substantial benefits from CSA.

(D) Soliciting the sale of or selling political fund-raising tickets to other than employees covered by this section.

<sup>1</sup>Further information on activities prohibited by Chapter 15, Title 5 of U.S. Code may be obtained from the Office of General Counsel, United States Civil Service Commission, Washington, D.C. 20415.



tion or other persons associated with or receiving substantial benefits from CSA.

(E) Organizing and/or serving as an officer of a political club or organization.

(F) Organizing and/or conducting a political meeting or rally.

(G) Managing or taking part in the management or conduct of a political campaign.

(H) Engaging in any legal activity at the polls in any election.

(I) Writing, publishing, distributing, or circulating political campaign literature or petitions, including nomination petitions.

[41 FR 15011, Apr. 9, 1976; 41 FR 18081, Apr. 30, 1976]

**§ 1069.8-7 Additional precautions.**

(a) As explained in section 6 of this subpart employees of all CAAs, other public grantees and public delegate agencies are prohibited from being candidates for public elective office in partisan elections, but are otherwise free to engage in political activities while off-duty. This does not prohibit employees of private grantees other than CAAs and private delegate agencies from running for office or engaging in any other partisan political activities while off-duty. However, all employees should conduct such activities so as to avoid identifying their agencies with political campaigns associated with electing candidates to public or party office. With the recent expansion of the permissible scope of these activities pursuant to the Federal Election Campaign Act Amendments of 1974 (Pub. L. 93-443), it is especially necessary for all employees to act scrupulously so as to maintain the separation between their private political activities and their actions on the job.

(b) Directors and deputy directors of grantees and delegate agencies and neighborhood and outreach workers have the most substantial contacts with the community and are likely to be regarded as spokesmen for their agencies. Hence they must be particularly careful not to involve or identify the CSA-assisted program with the campaign of any individual for public or party office.

(c) All grantee and delegate agencies must inform their employees about these precautions.

**§ 1069.8-8 Enforcement.**

(a) *Reporting possible violations.* (1) Violations of Title 5, Chapter 15, U.S. Code. When a grantee or delegate agency or individual has reason to believe that an employee has engaged in political activity prohibited by the statutory provisions of Chapter 15, Title 5 of the U.S. Code (§ 1069.8-6(b)(1) (i) and (ii) of this subpart), the agency or individual shall report the matter to the United States Civil Service Commission, Office of the General Counsel, Washington, D.C. 20415.

(2) Other violations. Information concerning possible violations of other provisions of this subpart shall be reported either in writing or orally by the grantee or delegate agency or any individual to the CSA Office of Inspection in Washington, D.C.

(3) If the grantee, delegate agency or individual is uncertain as to whether an activity violates the statutory provisions of Chapter 15, Title 5 of the U.S. Code administered by the Civil Service Commission, the information may be submitted to the CSA Office of the General Counsel in Washington, D.C. The CSA General Counsel will refer information concerning possible violations of Chapter 15, Title 5 of the U.S. Code to the Civil Service Commission for consideration where appropriate.

(4) A grantee or delegate agency may in addition make such preliminary inquiry as may be necessary to verify the facts concerning the reported violation and initiate appropriate action to prevent a continuation or recurrence of the prohibited activity.

(b) *CSA action to prevent continuation repetition of violations.* (1) When CSA receives information concerning possible violation of the restrictions of this subpart it may—

(i) conduct an investigation to ascertain the facts and, in appropriate cases, undertake informal discussions with the grantee or delegate agency concerned in order to agree upon means for preventing continuation or repetition of the violation, and

(ii) refer the matter, with/or without investigation, to the Office of the General Counsel of the Civil Service Commission for consideration.

(2) If CSA concludes, after discussions with the local agency concerned, that appropriate action will not be taken by the grantee, CSA may then issue an order to the grantee directing it to take such action as may be necessary to prevent continuation or repetition of the violation.

(3) If the grantee fails to comply with such an order issued by CSA, CSA may, on an emergency basis, summarily suspend assistance in whole or in part, or it may proceed to suspend or terminate assistance pursuant to Part 1067 of Chapter X, Title 45 of the Code of Federal Regulations, (OEO Instruction 6730-2). A grantee whose financial assistance has been summarily suspended under this provision may at any time request informal discussions with CSA officials and present evidence that no further violation is occurring and may also request CSA to hold a full hearing in accordance with the regulations cited above.

(c) *Enforcement action by the Civil Service Commission.* (1) CSA may refer any specific information of apparent violation of the non-Hatch Act restrictions set forth in this subpart to the General Counsel of the Civil Service Commission for investigation and determination. The General Counsel of the Commission may conduct an investigation and inform CSA and the grantee or delegate agency involved of his findings of fact and the corrective action recommended. If the corrective action recommended is directed against an employee of a grantee or delegate agency, the General Counsel of the Commission shall also inform the employee involved of his findings of fact and recommendation. In formulating his findings of fact and the corrective action recommended, the General Counsel of the Commission may request information from and solicit the views of CSA.

(2) Within fifteen days after receipt of the report of the General Counsel of the Commission, the grantee or delegate agency shall either comply fully with the Commission's recommendations or request the Commission to

hold a hearing. If the Commission recommends the dismissal or suspension of an employee, he may also request a hearing. The Commission shall give notice of the time and place of the hearing at which the agency or the affected employee is entitled to appear in person, or by or with counsel. The agency or employee and the counsel for the Commission are responsible for securing the attendance of their respective witnesses. There is no power of subpoena in these cases.

(3) The hearing shall be before an examiner designated by the Commission. Testimony shall be under oath or affirmation and the parties may introduce affidavits and other documentary evidence. Unless the parties agree to a summary of the testimony, the hearing will be reported stenographically. The hearing examiner shall report his findings of facts and recommendations of sanctions to the Director of CSA.

(4) The Director of CSA may reject, modify or affirm the recommendations of the hearing examiner. If he accepts any part of the recommendations, he shall issue an order to the agency directing it to comply with those sanctions he has accepted. If the local agency refuses to comply within five days after receiving this order, the Director may suspend or terminate assistance to the agency pursuant to Part 1067 of Chapter X, Title 45 of the Code of Federal Regulations. However, if the Director of CSA affirms a recommendation of the hearing examiner that assistance to a local agency be suspended or terminated, CSA shall not hold an additional hearing. In such instances, the hearing held before the examiner designated by the Civil Service Commission shall be regarded as satisfying the requirements of Part 1067 of Chapter X, Title 45 of the Code of Federal Regulations.

(5) In any hearing held by CSA pursuant to Part 1067, an issue of fact previously determined by a hearing examiner designated by the Commission shall be deemed conclusively determined and shall not be relitigated.

(6) The sanctions which the General Counsel of the Commission or a Commission-designated hearing examiner may recommend include, but are not limited to, the following:

(i) Full or partial termination or suspension of assistance.

(ii) Changes in the administration of the grantee's or delegate agency's program or activities.

(iii) An order to an agency directing the dismissal, suspension, transfer or reprimand of an employee or other person engaged in carrying out the agency's program.

#### APPENDIX A

##### EXCERPTS FROM THE COMMUNITY SERVICES ACT OF 1974

Sec. 213(a): "Each community action agency shall observe, and shall (as appropriate) require or encourage other agencies participating in a community action program to observe, standards of organization, management and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the title and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias. . . ." "Each community action agency shall establish or adopt rules to carry out this section. . . ."

Sec. 213(b): "The Director shall prescribe rules or regulations to supplement subsection (a), which shall be binding on all agencies carrying on community action program activities with financial assistance under this title."

Sec. 602(n): "In addition to the authority conferred upon him by other sections of this Act, the Director is authorized, in carrying out his functions under this Act, to es-

tablish such policies, standards, criteria, and procedures, prescribe such rules and regulations . . . and generally perform such functions and take such steps as he may deem to be necessary or appropriate to carry out the provisions of this Act."

Sec. 603(a): "For purposes of Chapter 15 of Title 5 of the United States Code any overall community action agency which assumes responsibility for planning, developing, and coordinating community-wide anti-poverty programs and receives assistance under this Act shall be deemed to be a State or local agency; and for purposes of clauses (1) and (2) of section 1502(a) of such title any agency receiving assistance under this Act shall be deemed to be a State or local agency."

Sec. 603(b): "Programs assisted under this Act shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis."

#### APPENDIX B—CHECKLIST OF APPLICABILITY OF RESTRICTIONS

[An X designates the restrictions which do apply]

| Type of agency and persons                                       | Applicable section of 45 CFR 1069.8 |      |      |      |                |
|------------------------------------------------------------------|-------------------------------------|------|------|------|----------------|
|                                                                  | 5(c)                                | 5(d) | 5(e) | 5(f) | 6              |
| CAA's, other public grantees and public delegate agencies:       |                                     |      |      |      |                |
| Programs and program funds.....                                  | X                                   | X    | X    | X    |                |
| Employees.....                                                   | <sup>1</sup> X                      | X    | X    |      | <sup>2</sup> X |
| Volunteers.....                                                  | X                                   | X    |      |      |                |
| Board members.....                                               | X                                   |      |      |      |                |
| Private grantees and private delegate agencies other than CAA's: |                                     |      |      |      |                |
| Programs and program funds.....                                  | X                                   | X    | X    | X    |                |
| Employees.....                                                   | <sup>1</sup> X                      | X    | X    |      |                |
| Volunteers.....                                                  | X                                   | X    |      |      |                |
| Board members.....                                               | X                                   |      |      |      |                |

<sup>1</sup> Except that employees of educational and research organizations are not covered by subsecs. 5(c)(1) and 5(c)(2).

<sup>2</sup> Except that employees of educational and research organizations are not covered and that trainees are covered only if they are in on-the-job training for positions with the agency.



**Subpart 1069.9—Policy and Procedures on \$18,000 Per Year Limitation (CSA Instruction 6903-1a)**

**AUTHORITY:** Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

**SOURCE:** 43 FR 57890, Dec. 11, 1978, unless otherwise noted.

**§ 1069.9-1 Applicability.**

This subpart is applicable to all employees working on a community action program funded under Title II, Sections 221 and 222(a) of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by the Community Services Administration.

**§ 1069.9-2 Reference.**

Section 244(2) of the Economic Opportunity Act, as amended; "The Director (of CSA) shall issue necessary rules or regulations to insure that no employee engaged in carrying out community action program activities receiving financial assistance under this title is compensated from funds so provided at a rate in excess of \$18,000 per annum, and that any amount paid to such an employee at a rate in excess of \$18,000 per annum shall not be considered in determining whether the non-Federal contributions requirements of Section 225(c) have been complied with; the Director may, however, provide in those rules or regulations for exceptions covering cases where, because of the need for specialized or professional skills or prevailing local salary levels, application of the foregoing restrictions would greatly impair program effectiveness or otherwise be inconsistent with the purposes sought to be achieved."

**§ 1069.9-3 Definitions.**

(a) *Employee.* A person considered an employee for the purpose of withholding Federal income tax. For example, experts and consultants performing services on an intermittent or occasional basis will usually not be employees and will usually not be covered by the restriction. Volunteer service is the valuation of volunteered services, which the volunteer receives no compensation.

(b) *Project funds.* Funds received from CSA as part of the Federal share of a grant or contributed locally as part of the approved non-Federal share of an CSA grant.

**§ 1069.9-4 Policy.**

(a) The 1978 amendments to the Economic Opportunity Act authorized an increase in the maximum salary allowable for payment to employees carrying out activities under Title II to \$18,000. Anytime this limitation is to be exceeded, regardless of the cause, e.g. step increases, promotions, etc. approval by CSA is requested. Also, any succeeding increases or promotions for position again must receive CSA approval. However, the \$18,000 limitation does not include the value of fringe benefits allowable under CSA policies.

(b) Note that the legislative permission to grant exceptions is a means to avoid situations in which the salary limitation would impair program effectiveness. It does not give any general permission for liberalization of salaries at or near \$18,000.

**§ 1069.9-5 Clarification of effect of \$18,000 limitation.**

(a) *Local payment of salaries over \$18,000 per year.* The legislation does not forbid local agencies from paying community action employees at a rate over \$18,000 per year in those cases where CSA does not approve such a salary. The Act provides only that the excess compensation is granted. Local agencies may pay more than the \$18,000 rate, using their own sources for the excess compensation.

(b) *Impact on new employees.* In cases where CSA has approved a salary above \$18,000 for a position under the provisions of this directive and there is a change in the incumbent of that position, it will not normally be necessary to request a new waiver if the duties and responsibilities of the position remain essentially the same and the approved salary was not based on the comparability data of the community from which the previous incumbent was hired.

(c) *Effect of restriction on part-time CAP employees.* Where an employee

spends only part-time working on a community action program, the \$18,000 per year restriction will apply pro rata to that portion of the work which is charged to the community action program.

**§ 1069.9-6 Criteria and procedures for CSA exceptions to \$18,000 limitation.**

(a) In general, procedures for applying for an exception to the \$18,000 limitation will be part of the regular grant approval process. Although it is expected that most requests for an exception to the \$18,000 limitation will be made at the time of the grant application, a grantee may initiate a request for an exception at any time during the program year. No matter when the request is made, however, CSA administering offices will specifically inform the grantee in writing when such a request is approved.

(b) At a minimum, the notification will contain the specific identification of the position (and the applicant and his/her last community in which he/she was employed if approval is based on salary rates that prevail in the community from which hired), the salary requested, the salary approved and the effective time period covered.

(1) Types of Positions Eligible for Exception. The grantee may apply for an exception to the \$18,000 limitation for any specific position which calls for a person of specialized skills or other qualifications requiring a rate of pay in excess of \$18,000 per year, e.g. physicians, dentists, lawyers. Top administrators of large and complex programs, e.g. executive director of a large metropolitan area CAA or of a multi-county rural CAA involving a complex coordinating role and administration of a large poverty program with many components may also be excepted.

(2) Criteria for CSA Approval of Salaries in Excess of \$18,000 per Year Rate. In all cases the grantee must provide documentation and CSA approval will be based upon, the following considerations:

(i) Programmatic Need for Salary Requested. Consider both the need for that position and the need for a person with qualifications calling for the salary requested.

(ii) Also consider the anticipated reduction in program effectiveness if a person of lower qualifications were hired and any anticipated difficulties in recruiting persons if a lower rate were paid.

(3) Wage Comparability. Generally, the salary paid must be comparable to the prevailing salary level for comparable positions in the community of the CSA-funded agency or must be comparable to the prevailing salary level for similar positions in the community in which the person hired held in his/her last preceding employment. (See OEO Instruction 6900-02).

(c) The administering offices may request additional justification and/or documentation from the grantee or delegate agency if the submission is inadequate as a basis for judgment.

**Subpart 1069.26—Social Security Coverage for Employees Under CAP Grants (CSA Instruction 6906-01)**

**AUTHORITY:** Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

**SOURCE:** 44 FR 56583, Oct. 1, 1979, unless otherwise noted.

**§ 1069.26-1 Applicability.**

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

**§ 1069.26-2 Effective date.**

September 13, 1966 (CSA Instruction 6906-01)

**§ 1069.26-3 Purpose.**

CSA recognizes the important benefits which accrue to employees from social security coverage, and strongly recommends that those grantee and delegate agencies which are not already obligated by law to report wages for social security purposes seek to obtain coverage for their employees whenever feasible. It is CSA policy to include in its grants the funds necessary to pay the employer's share of social security contributions. These

contributions are a legitimate budgetary expense under fringe benefits in the personnel category of the budget. This subpart is designed to familiarize grantee and delegate agencies with the possibilities of coverage under the Social Security Act and the requirements of reporting their employees' wages.

**§ 1069.26-4 Identification of employer for social security purposes.**

It is important to determine who is the employer for purposes of the social security laws. The employer, for social security purposes, is the agency which has the authority to direct how, when and where the employee's services will be performed, and which has the right to hire and fire. Most frequently the employer is the organization which directly administers the component program, that is, the grantee in a non-delegated program or the delegate agency in a delegated program. If you have difficulty in determining who is the employer for social security purposes, you should contact your local Social Security Administration or Internal Revenue Service office.

**§ 1069.26-5 Where the employer is a private nonprofit organization.**

(a) Every private nonprofit agency is required by CSA to furnish evidence that it has obtained, or is applying for, an Internal Revenue Service income tax-exemption ruling. Grantees and delegate agencies that qualify will be granted this exemption, in most cases, as religious, educational, or charitable organizations under Section 501(c)(3) of the Internal Revenue Code. These agencies are also exempt for FICA tax (social security) unless they elect to provide social security coverage for their employees. An agency which wishes to provide coverage for its employees must waive its FICA tax exemption by filing a completed Form SS-15 with the District Director of Internal Revenue. Persons employed during the calendar quarter in which the waiver form is filed may choose whether they want social security coverage. All employees who choose to be covered indicate their choice by signing the Form SS-15(a) which is filed

with the Form SS-15. Employees hired after the calendar quarter in which the waiver certificate is filed are mandatorily covered, and the agency must deduct the employees' share of the contribution from their wages.

(b) If the employer does not qualify as a 501(c) Organization (religious, educational, charitable), social security coverage is mandatory for its employees.

(c) Both private non-profit organizations whose employees are mandatorily covered and those 501(c)(3) organizations which waive their exemption from FICA tax must report the wages of all employees who earn \$50 or more for a calendar quarter to the appropriate District Director of Internal Revenue. Information concerning the withholding and payment of social security contributions can be obtained from the Internal Revenue Service.

**§ 1069.26-6 State and local government agency as employer.**

Whether an employee of a State or local governmental (i.e., public) agency is covered by social security depends upon the terms of the voluntary agreement between the State and Federal Government. Coverage may already have been provided for employees of the entity under the State's agreement, or if not, it may be possible to provide coverage. Each such agency should contact the appropriate State Social Security Administrator for information concerning coverage of its employees, and the withholding and payment of social security contributions. Where employees of such public agencies are covered, their wages are reported on forms provided by, and filed with, the State Social Security Administrator.

**§ 1069.26-7 Indian Tribal Council or similar tribal organization as employer.**

Although such organizations are considered public agencies under Title II of the Economic Opportunity Act, they normally are classified as private agencies under the Social Security Act and the Internal Revenue Code. Employment in all such organizations is mandatorily covered by the Social Security Act and the organization is sub-



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ject to FICA tax. Wages of all employees must be reported to the appropriate District Director of Internal Revenue.

### Subpart 1069.28—Prohibition Against Acceptance of Gifts and Gratuities (CSA Instruction 6909-1)

**AUTHORITY:** Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

**SOURCE:** 44 FR 56584, Oct. 1, 1979, unless otherwise noted.

#### § 1069.28-1 Applicability.

This subpart applies to all grantees financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

#### § 1069.28-2 Effective date.

#### § 1069.28-3 Definition.

Members of employee's immediate family shall include any of the following persons:

|               |                 |
|---------------|-----------------|
| Husband       | Brother         |
| Father        | Son             |
| Mother        | Daughter        |
| Sister        | Wife            |
| Father-in-law | Son-in-law      |
| Mother-in-law | Daughter-in-law |
| Sister-in-law | Brother-in-law  |

#### § 1069.28-4 Policy.

(a) Employees of all grantees, delegate agencies, members of employee's immediate family, and members of any board or policy-making body of such agencies, are prohibited from accepting gifts, money and gratuities:

(1) From persons receiving benefits or services under any program financially assisted by the Community Services Administration.

(2) From any person or agency performing services under contract.

(3) From persons who are otherwise in a position to benefit from the actions of any employee or board member.

(b) Grantees and delegate agencies shall include the above prohibition in their published personnel policies or publish written instructions to supplement their personnel policies, and es-

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tablish effective procedures to enforce the prohibition.

### PART 1070—GRANTEE PUBLIC AFFAIRS

#### Subpart 1070.1—Public Access to Grantee Information (CSA Instruction 7041-1)

**Sec.**

1070.1-1 Applicability of this subpart.

1070.1-2 Definitions.

1070.1-3 Requirements for inspection and examination.

1070.1-4 Classes of public information.

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#### Subpart 1070.2—Grantee Public Meetings and Hearings (CSA Instruction 7042-1)

1070.2-1 Applicability of this subpart.

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1070.2-4 Time, place, and notice of public meetings.

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#### Subpart 1070.4—Grantee Involvement in the News Media (CSA Instruction 7044-1a)

1070.4-1 Applicability.

1070.4-2 Policy.

1070.4-3 Procedures.

#### Subpart 1070.1—Public Access to Grantee Information (CSA Instruction 7041-1)

**AUTHORITY:** Secs. 213, 602, 81 Stat. 695, 78 Stat. 530; 42 U.S.C. 2796, 2942.

**SOURCE:** 34 FR 7375, May 7, 1969, unless otherwise noted.

#### § 1070.1-1 Applicability of this subpart.

This subpart applies to all public agencies and private organizations which receive financial assistance under title I-B, I-D, II, or III-B of the Economic Opportunity Act, as amended, if the assistance is administered by OEO.

#### § 1070.1-2 Definitions.

As used in this subpart—

(a) "Agency" when used without qualification means a public agency or private organization which has received assistance under title I-B, title

I-D, title II, or title III-B of the Economic Opportunity Act.

(b) "Applicant agency" means an agency which has filed an application with OEO for direct assistance under title I-B, title I-D, title II, or title III-P of the Economic Opportunity Act.

(c) "Community Action Agency" means an agency that has been recognized as such under section 210 of the Economic Opportunity Act by OEO.

(d) "Completed audit" means the auditor's final report as transmitted to the audited agency, along with any comments made by the audited agency in response to the audit report. The audit becomes "completed" 30 days after receipt by the audited agency.

(e) "Delegate agency" means an agency to which the development, conduct, or administration of all or part of a project assisted under title I-B, title I-D, title II, or title III-B of the Economic Opportunity Act has been delegated by the direct recipient of the assistance.

(f) "Economic Opportunity Act" means the Economic Opportunity Act of 1964 together with amendments. Citation to any section includes the corresponding section of the Act prior to the 1967 Amendments.

(g) "OEO," unless otherwise indicated in this subpart, refers to the appropriate Regional or Headquarters Office with responsibility for approving the particular grant or contract.

#### § 1070.1-3 Requirements for inspection and examination.

(a) Every Community Action Agency and every applicant agency which currently seeks recognition by OEO as a Community Action Agency shall make available to any person for inspection and examination all of those documents described in § 1070.1-4, but this shall not apply if the Community Action Agency or applicant agency is a State, a political subdivision of a State, or a combination of such political subdivisions.

(b) Any State, political subdivision of a State, or combination of such political subdivisions that is or seeks to become a Community Action Agency, any delegate agency, and all other agencies (other than Community Action Agencies) that are recipients of

direct assistance under title I-B, title I-D, title II, or title III-B of the Economic Opportunity Act shall make available to any person for inspection and examination those documents described in paragraphs (a) to (i) of § 1070.1-4 and the records described in paragraphs (j) through (n) which pertain to activities assisted by OEO.

#### § 1070.1-4 Classes of public information.

The following are the books and records and other classes of public information which an agency shall make available for public inspection and examination to the extent required by § 1070.1-3:

(a) Any application of the agency submitted to and currently pending with OEO for assistance under the Economic Opportunity Act;

(b) Copies of all those written statements and affidavits which are filed with the agency pursuant to the requirements of § 1070.2-5;

(c) Any proposal received by the agency and currently pending before it for inclusion of a certain project in an application to OEO;

(d) Any proposal approved by the agency for inclusion in an application for assistance under the Economic Opportunity Act but not yet submitted to OEO; however, this requirement shall not apply to proposals for research or demonstration projects in situations where the agency believes disclosure will jeopardize its proprietary interests in the proposal;

(e) All books of account maintained by the agency with respect to its development, conduct, or administration or any program or project assisted by OEO;

(f) All contracts made in connection with the administration of any program or project assisted by OEO, including contracts for conduct and administration of program accounts, contracts for consultant services, and contracts for the purchase of goods and services, as well as all purchase of goods and services, as well as all purchase orders, invoices, and other documents evidencing the expenditure of project funds;

(g) With respect to any assistance which has been received by the agency

from OEO under title I-B, title I-D, title II, or title III-B of the Economic Opportunity Act, the application for such assistance, the statement of grant or similar document indicating approval of the application and extension of assistance by OEO, and all documents accompanying such a statement of grant or similar document, or authorizing changes in the grant as originally approved;

(h) All report forms submitted by the agency to OEO with respect to the development, conduct, or administration of any program assisted by OEO, with the exception that this paragraph shall not apply to reports of data about identifiable persons who are clients of legal services programs or who are beneficiaries of any other programs;

(i) Articles of incorporation and by-laws of any private agency or any official acts governing the creation and operation of a public agency, and any similar documents which provide the basic authority of the agency or the basic rules of its governance;

(j) Lists of names of all current and past employees of the agency together with their job descriptions and their rate of compensation, but Neighborhood Youth Corps enrollees are not considered employees for purposes of this subsection nor are other persons receiving payments in the form of stipends or otherwise who are intended as the principal and direct beneficiaries of a program.

(k) Statements or records of all actions taken (as distinguished from reports of discussion) at all meetings of the principal representative board, the Board of Directors, Executive Committee, and other boards which have the power to make decisions on behalf of the agency or to advise the agency on policy;

(l) Lists of the names and addresses of all current and past members of the agency, and of its boards, councils, and committees that have or have had policy making or policy advisory responsibility for the program;

(m) Current and past budgets of the agency, and reports of completed audits of the accounts of the agency required by section 243 of the Economic Opportunity Act and made by a

certified public accountant, a duly licensed public accountant, or, in the case of a public agency, the appropriate public financial officer.

(n) Current and past city, State, and Federal tax returns filed by the agency.

§ 1070.1-5 Additional information.

Any agency which is assisted by OEO, or which is seeking such assistance, should make documents relating to such assistance available to the maximum extent possible. Except in cases where disclosure of such documents would involve an invasion of privacy, would impose an undue administrative burden on the agency, or would interfere with the internal decision making processes of the agency, the agency should permit examination and inspection of all such documents requested by any person. The enumeration of books and records and other classes of public information to be made available under § 1070.1-4 should not be considered exhaustive.

§ 1070.1-6 Conditions of public inspection and examination.

(a) In any case in which books and records or other documents are required by this subpart to be made available for public inspection and examination, they shall be made available at the principal office of the disclosing agency at which business related to assistance received under the Economic Opportunity Act is transacted.

(b) They shall be available during regular business hours on each regular workday (Monday through Friday of each week, official local holidays excepted). In the case of documents being used for official purposes at the time requested for inspection and examination is made, the documents shall be made available no later than five business days after the receipt of each request. The requirements for public inspection may be satisfied by making available for such inspection either the original or a copy which is both legible and capable of being legibly photocopied. Facsimile copies should also be furnished to any person upon request. If the agency uses its



own reproduction equipment, it may charge a fee of 10 cents or less for each page. If other equipment is used, the fee shall not exceed the actual cost of the service to the agency.

(c) In any case in which an agency concludes that notwithstanding the provisions of this subpart a document should not be made public, the agency shall immediately request the approval of OEO in writing, giving a description of the document and a full explanation of the justification for the agency's conclusion that the document is not of a public nature. OEO will in such cases make a prompt determination as to whether the document should be made public.

#### **Subpart 1070.2—Grantee Public Meetings and Hearings (CSA Instruction 7042-1)**

**AUTHORITY:** Secs. 213, 602, 81 Stat. 695, 78 Stat. 530; 42 U.S.C. 2796, 2942.

**SOURCE:** 34 FR 7376, May 7, 1969, unless otherwise noted.

##### **§ 1070.2-1 Applicability of this subpart.**

This subpart applies to all agencies and organizations covered by § 1070.1-1.

##### **§ 1070.2-2 Definitions.**

As used in this subpart—

(a) The terms "Community Action Agency," "delegate agency," "Economic Opportunity Act," and "OEO" have the same meaning as set forth in § 1070.1-2.

(b) "Community served" means the most expansive geographic area in which the grantee is authorized to conduct programs or provide benefits under the terms of its grant from OEO.

(c) "Community proposed to be served" means a city, county, multicounty, or multicounty unit, an Indian Reservation or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed for a community action program.

(d) "Designation" means the selection of a proposed Community Action Agency by a State, a political subdivi-

sion (including the Tribal Government of an Indian Reservation) or a combination of political subdivisions in accordance with regulations issued under section 210 of the Economic Opportunity Act.

(e) "Principal Representative Board" in the case of Community Action Agencies refers to that body which is designed to meet the composition requirements of section 211(b) of the Economic Opportunity Act. In the case of all other agencies, "Principal Representative Board" refers to the agency's "governing body" or "advisory board or committee" which meets the requirements of § 1060.1-2 (b)(5) and (c) of this chapter (Subpart—Participation of the Poor in the Planning, Conduct, and Evaluation of Community Action Programs).

##### **§ 1070.2-3 Public meetings after grant of assistance.**

(a) This subpart implements the requirement for public meetings in sections 213(a) and 213(b) of the Economic Opportunity Act. This requirement is applicable throughout the period of assistance to any agency which has received financial assistance under section 123, section 151, section 221, section 222(a), or section 312 of the Economic Opportunity Act. In the case of a Community Action Agency which is not a State, a political subdivision of the State, or a combination of subdivisions, this subpart applies to all activities of that agency. For all other Community Action Agencies, delegate agencies, and other agencies financially assisted under these sections, this subpart applies only to matters which pertain to activities assisted under these sections. An agency may satisfy this requirement for public meetings either by holding regular meetings as specified in paragraph (a)(1) of this section or by holding special meetings as specified in paragraph (a)(2) of this section.

(1) The agency may establish a procedure whereby regularly scheduled meetings of the principal representative board will be held not less often than one meeting every 10 weeks for the purpose of discussing past, present, or future policies or programs of

the agency; and persons who are not members of the board may attend and will be offered a reasonable opportunity to be heard whether or not on the agenda.

(2) Any such agency shall hold a public meeting in response to a written request for such a meeting by any person or group. The meeting shall be held within 30 days of the receipt of the request by the agency. A request for a meeting shall include a statement of the basic issue or issues which the requesting party particularly wishes considered at the meeting. A request may be denied if, by a vote of at least three-fourths of the members of the principal representative board of the agency who are present at a lawful meeting, the board determines either that the request raises only frivolous issues or that the proposed meeting would merely be repetitive of previous public meetings. Notice of such board decision must be sent within 30 days to OEO.

(b) The public hearing requirements of this section are in addition to the requirements of CA Memo 80, Part C(4) for public meetings prior to designation of a community action agency and Part I of OEO Instruction 6710-1 for open board meetings are part of the grant preview process.

[34 FR 7375, May 7, 1969, as amended at 34 FR 8919, June 4, 1969]

**§ 1070.2-4 Time, place, and notice of public meetings.**

All public meetings required under paragraphs (a) and (b) of § 1070.2-3 shall be held at a time and place convenient to the public. Public notice of each meeting shall state the time and place at which the meeting shall be held and the agenda for the meeting, and shall be given not less than 10 days before the day of the meeting. Notice of a meeting shall be given by:

(a) Publishing a formal notice as a legal notice in at least one newspaper generally circulated within the community served or proposed to be served by the agency; and

(b) Posting a formal notice in a prominent place at the principal office of the agency, at the county courthouse, at the city hall of each major city within the area, at each other

place where official notices are regularly posted, and at such appropriate other places within the community served or proposed to be served as may be designated by the representatives of the poor on the principal representative board; and

(c) Forwarding a formal notice of the meeting:

(1) To every newspaper with a daily or weekly circulation of more than 5,000 copies within the community served by the agency, or if there is no newspaper having circulation of that size then to every newspaper with a daily or weekly circulation of more than 2,500 copies in such community,

(2) To every radio and television station which regularly broadcasts local news or announcements of meetings in the community served, or proposed to be served,

(3) To any community newspaper or journal primarily serving a neighborhood or area in which the agency runs or is preparing to run a program under the Economic Opportunity Act,

(4) To each person who has submitted a written request for copies of such notices,

(5) To the State Economic Opportunity Office for the State in which the agency is located,

(6) To OEO,

(7) To every member of the principal representative board of the agency, and

(8) To the chief elected officials in the community served or proposed to be served and other appropriate public officials.

However, agencies which serve an area larger than a single county shall consult OEO concerning the place or places where meetings shall be held and what notice shall be required. Procedures approved by OEO shall, to the extent specified by OEO, satisfy the requirements of this section.

**§ 1070.2-5 Conduct of the public meetings.**

(a) Each meeting shall be held before the principal representative board. It shall be held at the time and place set forth in the notice of meeting. In the event the meeting cannot be completed on that date, it may be continued from day-to-day or ad-

journeyed to a later day without notice other than the announcement of the place, day, and time by the presiding officer, and the posting of that information on the door of the originally publicized meeting place for the benefit of late arrivals.

(b) Each meeting shall be open to all members of the public. Every person expressing a desire to speak shall be heard, although the presiding officer may establish reasonable limits on the length of the statement of any one person. Should the presiding officer determine that the opportunity to be heard is being utilized for purposes of delay, he may exclude statements essentially repetitious of statements already heard.

(c) Although meetings may be conducted in an informal manner, minutes shall be kept which fairly and accurately reflect the business of the meeting, and the basic sides of any disputed questions or issues which arise. Written statements and affidavits shall be accepted for the record of the meeting. Such statement and affidavits should preferably be submitted in triplicate, but shall be accepted even if offered in a single copy or in duplicate. Such statements shall be made public at the office of the agency.

#### **Subpart 1070.4—Grantee Involvement in the News Media (CSA Instruction 7044-1a)**

**AUTHORITY:** Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

**SOURCE:** 41 FR 6256, Feb. 12, 1976, unless otherwise noted.

##### **§ 1070.4-1 Applicability.**

This subpart applies to all programs financially assisted under Titles II and VII of the Community Services Act if such assistance is administered by the Community Services Administration.

##### **§ 1070.4-2 Policy.**

(a) *Publishing a Newsletter or House Organ.* CSA does not provide funds for the publication of newspapers. However, grantees are encouraged to publish newsletters or house organs which assist local anti-poverty efforts. These publications are generally financed

under the administrative budget of the local agency.

(1) CSA makes the following distinctions between newspapers and newsletters:

(i) A newspaper attempts to meet a population's general information need, while the grantee newsletter has a specific information objective and a limited audience. A newsletter attempts to bridge the communication gap often existing between a grantee and the people it serves by raising the level of information about the nature, goals, and resources of local anti-poverty efforts.

(ii) Newspapers are sold for profit, and they attempt to solicit commercial advertising. A grantee newsletter is not sold, nor is commercial advertising solicited or accepted for it.

(2) Newsletters are under local control as are all other grantee activities. Consequently, they reflect the policies and opinions of the local grantee. Newsletters are also subject to the same laws and regulations, such as those restricting partisan political activity, which govern CSA funded programs.

(3) CAA principal representative boards and boards of CDC's and limited purpose agencies have the ultimate responsibility of insuring that the content of all grantee publications coming under their jurisdiction reflect the policies and opinions of the local program and are in accord with CSA policy. To accomplish this, the board may elect to delegate the review function to the Executive Director. In all cases, publications must be reviewed prior to printing to assure compliance with this policy and the sanction of the board. Arrangements should be made by the grantee with each of its delegate agencies, neighborhood councils, and any other group it funds who may be publishing a newsletter or house organ to expedite this review process in a manner consistent with timely publication and program responsiveness. Project funds will not be spent for newsletters unless a review procedure has been established in accordance with this Instruction.

(b) *Use of Advertising Time and Space as Non-Federal Share.* CSA does not credit as an in-kind contribution



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for a grantee's non-Federal share requirement any news coverage, editorial comment, advertising or public service time or space in any communications media such as radio, television, magazines, wire services and news services. This policy does not, however, prohibit a grantee from using Federal or non-Federal funds for publishing or advertising program activities when the grantee can show that the expense is the best way of achieving a legitimate program purpose. This is an allowable expenditure although not an allowable in-kind contribution for a grantee's non-Federal share requirement. This policy also does not prohibit a grantee from accepting public service time or notices in the mass media, as long as such activities are not treated as in-kind, non-Federal share contributions.

### § 1070.4-3 Procedures.

In cases where the practices of a grantee conflict with this policy statement, such as with newsletters which may be soliciting advertising, CSA will help the grantee determine a reasonable timetable and plan through which such operations may be phased-out without halting publication. CSA will help grantees determine a reasonable cost for their newsletter and will assist them in working the cost of the newsletter into their administrative budget.

## PART 1076—ECONOMIC DEVELOPMENT PROGRAMS

### Subpart 1076.10—Composition and Selection of CDC Boards of Directors (CSA Instruction 6402-2)

#### Sec.

- 1076.10-1 Applicability.
- 1076.10-2 Policy.
- 1076.10-3 Composition of CDC Boards.
- 1076.10-4 Selection of CDC Board Members.
- 1076.10-5 Compliance Procedures and Waivers.

### Subpart 1076.20—Non-Equity Business Programs Funded by CDCs (CSA Instruction 6158-2)

- 1076.20-1 Applicability.
- 1076.20-2 Definitions.
- 1076.20-3 Policy.

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- 1076.20-4 Procedures, requirements, and limitations.

### Subpart 1076.41—Waiver of Non-Federal Share of Program Costs for Certain Title VII Programs (CSA Instruction 7641-1)

- 1076.41-1 Applicability.
- 1076.41-2 Effective date.
- 1076.41-3 Purpose.
- 1076.41-4 Background.
- 1076.41-5 Policy.
- 1076.41-6 Valuation of non-Federal share.

### Subpart 1076.50—Rural Development Loan Program

- 1076.50-1 Definitions.
- 1076.50-2 Objectives of the Rural Development Loan Fund Program.
- 1076.50-3 Organizations eligible for financial assistance under this program.
- 1076.50-4 Eligible activities.
- 1076.50-5 Program priorities.
- 1076.50-6 Loans; interest on; allowable costs.
- 1076.50-7 Terms of loans and guaranties.
- 1076.50-8 Application process.
- 1076.50-9 Content of applications.
- 1076.50-10 Loans and guaranties made by recipients to other eligible organizations.
- 1076.50-11 Security.
- 1076.50-12 Post-award requirements.
- 1076.50-13 Liquidation; default.
- 1076.50-14 Conflict of interest.

**CROSS REFERENCE:** For policy governing the Community Development Credit Union Program, see 12 CFR Part 705 issued jointly by the Community Services Administration and the National Credit Union Administration.

### Subpart 1076.10—Composition and Selection of CDC Boards of Directors (CSA Instruction 6402-2)

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 40 FR 44818, Sept. 30, 1975, unless otherwise noted.

#### § 1076.10-1 Applicability.

This subpart applies to all community development corporations (CDCs) financially assisted by CSA under Sections 712 and 747 of the Community Services Act of 1974, subject to the provisions of § 1076.10-5.

## § 1076.10-2 Policy.

(a) It is the clear intent of Title VII that CDCs be self-help organizations controlled by and responsible to low-income residents. It is also the intent of Title VII that CDCs mobilize other community resources and carry out their self-help efforts in partnership with the business and financial community. The governing policy for CDC boards is therefore that they be composed primarily of low-income residents or their representatives, chosen through a direct or indirect election process to assure their legitimacy as spokesman for the target area residents, with additional representation from local businesses and financial institutions to strengthen the board's technical skills and involvement with the larger community.

(b) § 1076.10-3 provides the specific requirements for the composition of CDC boards. § 1076.10-3 outlines the representation requirements for the two basic categories of board members. § 1076.10-4 provides the specific requirements for selecting board members, including a discussion of the two different methods—direct and indirect—for electing representatives of target area residents.

## § 1076.10-3 Composition of CDC Boards.

(a) *Size of Board.* CDCs are free to determine the size of their boards of directors. In doing so, CDCs must strike a balance between various, sometimes conflicting, considerations. On the one hand, they must be of a sufficient size as to provide adequate representation to both the target area residents and the business community (see paragraph (c) below), to permit the formation of working committees without requiring the same individuals to serve on more than one or two, and to insure that even a minimum quorum is still large enough to represent the community and legitimately reach basic policy and program decisions. On the other hand, the board must be small enough to permit business to be conducted in an efficient and expeditious way. It has been the experience of OED that the ideal size for a CDC board is between 15 and 30 members. Generally, anything larger tends to become unwieldy, while any-

thing smaller overtaxes the capacity of individual members and limits the board's representativeness. Where a CDC chooses to have a board larger than 30 or smaller than 15 members, it shall explain its choice to OED.

(b) *Residency Requirements.* (1) Members of CDC boards of directors should be residents of the special impact area, except in those instances where it is necessary to choose non-residents to insure effective representation of the business and financial community. In almost all rural CDCs (with the possible exception of Indian reservations) where the special impact area is a sizable land mass including middle class and affluent residential areas as well as high levels of low-income population, there will seldom be a need to have non-residents on the board even to represent the business sector. In urban CDCs, where the special impact area is usually a low-income neighborhood of a large city, effective spokesmen for the business and financial community may not reside within the special impact area, even if their businesses or financial institutions are located there. In most urban CDCs it will be necessary to reach out to the larger community to find adequate representation of the business sector.

(2) Nevertheless, as provided in paragraph (c) below, representatives of the special impact area residents must always constitute a controlling interest on the CDC board. Accordingly, even in a CDC where every representative of the business and financial community is a non-resident, a clear majority of the board members will be residents of the area served.

(c) *Representation Requirements.* There are two categories of members on CDC boards of directors: representatives of the low-income community to be served and representatives of the business, financial, and general community.

(1) *Low-Income Community.*

(i) In order to comply with the policy requirements that CDCs be responsive to the low-income residents of the special impact area, representatives of the low-income community must have a controlling interest on any CDC board of directors. This

means that at a minimum representatives of the low-income community shall hold more than half of the seats on the board of directors. OED experience has indicated that an even larger proportion, generally around two-thirds, is preferable, since a bare majority is often not enough, given the relative inexperience of some community representatives, for representatives of the low-income community to maintain effective control.

(ii) Often, the total size of the board will determine the proportion of community representatives. The smaller the board, the greater the likelihood that community representatives will constitute less than the preferable two-thirds, so that a sufficient number of business sector representatives may be included on the board. On the other hand, on a larger board of, for example, 25 members, there is no reason why community representatives could not constitute at least two-thirds of the board and still allow sufficient seats for effective representation of the business sector.

(iii) Representatives of the low-income community need not themselves be low-income, provided they have been selected in a democratic fashion in accordance with § 1076.10-4. If appropriate selection procedures have been followed, however, it would normally be anticipated that many of the representatives of the low-income community will themselves be low-income. If only a small proportion of the community representatives are themselves low-income the CDC must demonstrate why this is not an indication of inadequate representation of the community to be served.

(2) *Business and Financial Community.* (i) The purpose of this category of board membership is twofold: to bring to the board individuals with specialized skills and experience which are crucial if the board is to be able to effectively make policy on business and community development programs; and to provide effective bridges between the CDC and other private financial and leadership resources in the larger community. While such representatives must be willing to make a personal commitment to the CDC program and its basic objectives, their se-

lection to the board may not be based primarily on their prior interest and involvement in the problems of the low-income community, but rather on their technical expertise and institutional contacts.

(ii) This category of board members normally includes businesspeople, accountants, officials of banks and other financial institutions, management representatives of local industrial firms, attorneys, and others exhibiting a positive interest in the Special Impact Program and the concept of community controlled economic development. This category might also include individuals who are not technically businesspeople but who hold leadership positions of prominence in the community, including public elected officials or their representatives, and directors or senior officials of public agencies or of related private non-profit agencies (e.g. local housing agencies, community action agencies, employment services, foundations, etc.).

(iii) To the extent the duly selected representatives of the low-income community may possess some of these skills, the effectiveness of the entire board will be improved. However, it is highly unlikely the community representatives will themselves bring to the board the total range and depth of business and leadership expertise needed to carry out an effective CDC program. Representatives of the business and financial community must be selected specifically because of their specialized skills.

#### § 1076.10-4 Selection of CDC Board Members.

Because of the different purposes of the two categories of board membership, the selection process for each must necessarily be different.

(a) *Low-Income Community.* (1) Two methods of selecting representatives of the low-income community are generally used by CDCs and are acceptable to OED: direct election by the members (if the CDC is a non-profit corporation) or stockholders (if the CDC is a for-profit corporation) of the CDC; or indirect election by constituent community organizations within



the special impact area which themselves use an acceptable democratic selection process. Often a mix of the two methods is used, with some, or most, community representatives chosen by direct election, and others by indirect election. While both methods are acceptable to OED, the direct election method is preferable. Even where it is demonstrated that the indirect election method is justified, it is preferred that a mix of the two methods be used so that at least some representatives are elected directly.

(2) The selection method used will depend primarily on whether or not the CDC has a broad membership base. Where the CDC has a large membership the direct election method is normally used. Where the CDC does not have a large membership the indirect method is often the only alternative. A broad well-informed, and active membership base is an important ingredient in building an effective and responsive CDC. Such a membership base—provided it is truly representative of the low-income residents and not only of one segment or faction—is concrete evidence of the CDC's legitimacy and support in the community to be served. A broad-based membership also helps to define who the program's beneficiaries are. Moreover, it is a way to insure that the CDC does not become an expression of a small group of self-appointed spokesmen, however well intentioned they might be.

(3) On the other hand, there may be circumstances where it would not be feasible to establish a broad-based membership, particularly in a large and diverse community where it would be hard to determine basic eligibility for membership. In such cases, where there are other well-established organizations which are clearly legitimate and effective spokesmen for the low-income residents, and which themselves have broad-based memberships, it may be preferable to have such organizations in turn select representatives to the CDC board. The burden is on the CDC, however, to demonstrate to OED why a direct membership base is not practical or advantageous and why the indirect election method would more effectively meet the com-

munity representation objectives of the Special Impact Program.

(4) Where the direct election method is used, the representatives of the low-income community may be elected by the CDC membership at an annual meeting or at a series of area meetings of members, preceded by some acceptably democratic nomination procedure. The actual procedure should be one that is adapted to the specific CDC. It should be spelled out in the CDC's by-laws. All representatives of the low-income community may be elected at large. However, many CDCs, particularly rural CDCs serving multicounty target areas, prefer to divide their community representative board seats on an area basis (for example, in a six-county program, to apportion two seats to each county), with the members from each area electing their own representatives. In some instances, a combination of these methods is used with some representatives elected on an area basis and some on an at-large basis (or some by indirect election).

(5) Where the indirect election method is used, the CDC must first identify the organizations which will elect representatives to the board, justifying to OED why those organizations are representative of all or portions of the community and why the number of seats allocated to each organization is appropriate. The CDC must then establish procedures to insure that the constituent organizations elect their representatives to the CDC board through democratic means.

(b) *Business and Financial Community.* (1) Normally, the most effective selection procedure is for the community representatives on the CDC board, once themselves elected, to meet and select the remaining members of the board. This provides for a process whereby the representatives of the business sector will not be self-appointed individuals unwelcomed by the community representatives, but properly motivated representatives who come to the board at the invitation of the target area residents to be served.

(2) In choosing representatives of the business and financial community,

the other members of the board should seek the advice and counsel of CDC staff, community leaders, and the organizations or institutions to be represented. In doing so, it is essential that no one be unilaterally selected to represent an organization or institution without the blessing of that organization or institution and its willingness to commit the individual's time and services. It is also essential that the community representatives put aside personal preferences and seek to find individuals with the desired skills and institutional contacts, rather than simply choose individuals who share the same backgrounds and experiences of the community representatives themselves.

(3) CDCs should avoid identifying by name in their by-laws the specific community institutions from which they may select representatives for their boards, since often over time community interests may change and different institutions may become preferable sources of board representatives. Where CDC by-laws already specify such institutions by name such by-laws should be periodically reviewed for change to allow for the substitution or addition of other institutions whose participation may be more relevant to the CDC's goals.

**§ 1076.10-5 Compliance Procedures and Waivers.**

(a) All CDCs funded by OED for the first time in Fiscal Year 1975 or in succeeding fiscal years must be in compliance with this Instruction as of the effective date of their initial OED grant, unless the conditions of their initial grant provide for a planned phase-in period for compliance during the initial grant period. All such CDCs, however, must be in complete compliance within a year of the effective date of their initial OED grant. In no case shall any such CDC be granted a waiver of any provisions of this subpart.

(b) All CDCs funded by OED for the first time in Fiscal Year 1974 or in prior fiscal years must be in compliance with this subpart within one year of the effective date of this subpart, unless granted a waiver of certain provisions of this subpart. Waivers will

normally not be granted by OED, and only upon a finding that (1) despite the noncompliance with particular provisions of this subpart the CDC's board composition and selection procedures have been demonstrated in actual practice to have substantially satisfied the intent to Title VII, and (2) the disruption and dislocation that would be caused by changing long-established CDC procedures would outweigh the advantages to be gained by such changes. In no event will OED consider requests for waivers submitted (1) after one year from the effective date of this subpart, or (2) from CDCs now in compliance with this subpart who wish to change their board composition and selection procedures in such a way as to not comply with this subpart.

**Subpart 1076.20—Non-Equity Business Programs Funded by CDC's (CSA Instruction 6158-2)**

**AUTHORITY:** Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

**SOURCE:** 44 FR 55012, Sept. 24, 1979, unless otherwise noted.

**§ 1076.20-1 Applicability.**

This subpart applies to all non-equity business programs financially assisted by community development corporations (CDCs) with CSA funds under Section 712 of the Economic Opportunity Act of 1964, as amended.

**§ 1076.20-2 Definitions.**

(a) *Business and Commercial Development Program.* Any venture, organized for profit or on a cooperative basis, financed in whole or in part by a CDC out of CSA Section 712(a)(1) grant funds under budget cost category 2.5, Investment Capital.

(b) *Non-Equity Business Program.* A business and commercial development program which is not a venture operating on a cooperative basis and in which the CDC has no equity interest.

(c) *Equity Interest.* Current ownership, in whole or in part of a venture. Specifically excluded from the meaning of this term are those forms of debt financing which involve an option or right to purchase or convert to own-

ership at some future time or upon some future contingency.

#### § 1076.20-3 Policy.

(a) Financial assistance for business and commercial development programs under Section 712(a)(1) shall be used predominantly for equity investment (either alone or in combination with other forms of financial assistance) and for cooperatives. This priority on equity investment and support for cooperatives derives from two factors: (1) The emphasis in Title VII on programs which will promote community-based ownership opportunities, an objective that can be best attained through either direct CDC investment in special impact area businesses or in development of cooperatives; and (2) the availability from other federal funding sources of financial assistance for technical assistance, loans, or loan guarantees, whereas Title VII is the only federal funding authority for equity capital.

(b) In addition, insofar as Section 712 funds are used for financial assistance to non-equity business programs, it is OED policy that such financial assistance be generally limited to loan guarantees, rather than be in the form of direct loans. This policy derives from three factors: (1) The availability of direct loan funds from non-Title VII funding sources, including commercial lending institutions; (2) the "leveraging" effect of loan guarantees in attracting outside debt capital into the special impact area; and (3) direct loan programs impose a significant administrative burden on the CDC and require substantial staff resources to service the loans once they are approved.

(c) Finally, since the primary thrust of Title VII is *community* economic development for low-income residents, rather than support to *individual entrepreneurs*, non-equity business programs assisted with Section 712 funds should also further the Title VII objective of promoting ownership or employment opportunities for low-income special impact area residents.

(d) Accordingly, CDC use of financial assistance under Section 712 for non-equity business programs is subject to three basic policy limitations:

(1) Such assistance shall be accorded a lower priority than, and shall not supplant opportunities for equity investments; (2) except in unusual circumstances direct loans may not be made to non-equity business programs from CDC investment capital funds, and only then as approved by OED on a case by case basis; and (3) financial assistance to non-equity business programs, whether in the form of direct loans, loan guarantees, or some other debt capital mechanism, may not be provided from CDC investment capital funds unless such assistance will provide ownership or employment opportunities to low-income residents of the special impact area.

#### § 1076.20-4 Procedures, requirements, and limitations.

(a) No CDC administrative funds under Section 712 (cost categories other than 2.5) may be used for *financial* assistance, whether direct loans or loan guarantees, to non-equity business programs. Note: This does not preclude the use of administrative funds for *technical* assistance, e.g., by CDC staff, to non-equity business programs.

(b) Except as provided in any venture autonomy agreement approved by OED, or as provided in any revolving loan guarantee funds approved by OED, no CDC investment capital funds (cost category 2.5) may be used for any individual loan or loan guarantee for any non-equity business program without prior written approval by OED.

(c) In requesting OED approval for any non-equity business program, whether it be an individual loan, individual loan guarantee, or revolving loan guarantee fund, the CDC must demonstrate how the program will directly benefit low-income residents of the special impact area, by providing either ownership or employment opportunities, or both. The CDC must also demonstrate, in requesting approval for any loan guarantee, that loans from commercial or other public sources would not be available without such guarantee. The CDC must also demonstrate, in requesting approval for any direct loan, that either loans



from commercial or other public sources would not be available even if the CDC were to guarantee such loans, or that control rights necessary to promote the purposes of Title VII would be obtainable only through a direct loan.

(d) No loan guarantee may exceed 50% of the loan(s) to any recipient, thereby providing at a minimum two-for-one leverage. Where the CDC can devise effective relationships with the lending institution and/or SBA, guarantees of less than 50% providing much greater leverage, should be arranged.

**Subpart 1076.41—Waiver of Non-Federal Share of Program Costs for Certain Title VII Programs (CSA Instruction 7641-1)**

**AUTHORITY:** Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

**SOURCE:** 44 FR 56586, Oct. 1, 1979, unless otherwise noted.

**§ 1076.41-1 Applicability.**

This subpart applies to all grantees financially assisted under Title VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

**§ 1076.41-2 Effective date.**

October 16, 1972 (CSA Instruction 7641-1).

**§ 1076.41-3 Purpose.**

The purpose of this subpart is to set forth the criteria for waiving the requirement of non-Federal share of program costs for programs carried out with financial assistance pursuant to Title VII of the Economic Opportunity Act of 1964, as amended (EOA).

**§ 1076.41-4 Background.**

(a) Section 714 of the EOA prescribes two types of non-Federal share requirements. The first requirement relates to the cost of the program including costs of administration. Section 714 permits the Director of CSA to issue regulations establishing objective criteria under which more than 90 per cent of the cost of Title VII pro-

gram may be supported by Federal Assistance. This subpart sets forth those criteria and is limited to the program costs non-Federal share requirements.

(b) The second non-Federal share requirement in Section 714 states that where capital investment is required under a contract with a private organization (other than a non-profit organization) the Federal share of such capital investment shall not exceed 90 per cent. That requirement is not affected by this subpart.

**§ 1076.41-5 Policy.**

(a) *General.* Each recipient of financial assistance under Title VII is ordinarily required to provide from non-Federal sources 10% of the cost of operating its program. However, under certain circumstances this requirement may be waived. A request for waiver shall be submitted by the applicant or recipient's Chairperson of the Board or comparable official to the Associate Director of Economic Development or other officer having authority to make the grant or otherwise furnish the financial assistance in question (hereinafter referred to as the responsible officer) and a determination shall be made by such officer.

(b) *Operating program.* (1) The requirement for a non-Federal share of program costs shall be waived in whole or in part where it is shown to the satisfaction of the responsible officer that:

(i) The applicant for financial assistance or recipient of financial assistance has made a vigorous effort to raise the non-Federal share but has not been and will not be able to do so in whole or in part.

(ii) The per capita income in the community served by the program is less than one-half the per capita income in the U.S. as a whole. (On the basis of the 1970 Census, one-half the per capita income was \$1570 and in February 1972, one-half the estimated per capita income in the U.S. as a whole was approximately \$1800). For programs operating in Alaska, the figure representing the per capita income for the United States as a whole shall be adjusted upward by 25% and in Hawaii by 15% to allow for

the substantially higher cost of living in those States.

(iii) If the per capita income figures submitted in support of the request for waiver are other than direct U.S. Census data, Census data shall be shown. The Officer determining the request for a waiver may request a full description of the procedures used in developing such data.

(c) *Support Programs.* The requirement of non-Federal share program costs shall also be waived in whole or in part for programs funded to conduct evaluations or research or to furnish support services to other Title VII programs or to CSA, the Department of Commerce, the Department of Labor or the Department of Agriculture, provided that the applicant for financial assistance has made a vigorous effort to raise the non-Federal share but has not been and will not be able to do so in whole or in part.

(d) *Procurement Contracts.* No non-Federal share is required for procurement contracts. Accordingly no waiver is needed.

#### § 1076.41-6 Valuation of non-Federal share.

Non-Federal contributions may be in cash or in-kind, fairly evaluated, including but not limited to plant, equipment and services. See Part 1050 of this chapter, Subpart F—Cost Sharing and Matching (CSA Instruction 6800-6).

#### Subpart 1076.50—Rural Development Loan Program

**AUTHORITY:** Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

**SOURCE:** 45 FR 62067, Sept. 18, 1980, unless otherwise noted.

#### § 1076.50-1 Definitions.

For the purpose of providing assistance under this subpart:

(a) "Business facilities and community development projects" means ventures, including community development credit unions, located in rural areas. Such projects are primarily aimed at providing increased income, ownership, or employment opportunities for low-income rural area resi-

dents and which either (1) are organized to earn a profit or on a cooperative basis, or (2) directed primarily to improving the physical or environmental infrastructure such as land development, community facilities and industrial and commercial projects. The term does not embrace social service projects operated on a not-for-profit basis such as job training, day-care or health services.

(b) "Community action agency" means an organization as defined in Section 210(a) of the Economic Opportunity Act of 1964, (EOA), as amended.

(c) "Community-based organization" means a cooperative or private non-profit organization at least 50 per centum of whose governing body is composed of local area residents and which is eligible for financial assistance under Title II of the EOA. The term shall also include a national, regional or state organization at least 50 per centum of whose governing board is composed of representatives of other community-based organizations.

(d) "Community development corporation" means an organization receiving assistance from CSA under Part A of Title VII, of the EOA which includes any organization more than 50 per centum of which is owned or controlled by such a community development corporation.

(e) "Community development credit union" means a type of business facility and community development project which is a credit union participating in the Community Development Credit Union Program jointly administered by CSA and NCUA whose membership consists predominantly of rural area residents; or any Federal or state chartered credit union whose membership consists predominantly of low-income rural residents.

(f) "Cooperative" means an incorporated or unincorporated association, in existence or being organized: (1) Whose members are allowed only one vote each; (2) at least 50 per centum of which is owned or controlled by low-income rural residents; (3) which conducts for the mutual benefit of its members such operations as producing, purchasing, marketing, processing and other activities primarily aimed at

improving its members' income as producers or their purchasing power as consumer.

(g) "Indian groups" shall mean public and non-profit private agencies, including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaska Native Claims Settlement Act, and such public and non-profit private agencies serving Hawaiian Natives, and Indian organizations in rural non-reservation areas.

(h) "Director" means the Director of the Community Services Administration (CSA).

(i) "Private non-profit" means an organization which is eligible for or has received exemption from Federal income taxes under Internal Revenue Code (IRC) section 501(c)(3).

(j) "Rural" includes all territory of a state that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urban area with a population density of more than one hundred persons per square mile as determined by the Secretary of Agriculture according to the latest decennial census.

(k) "Supportive organization of co-operatives" means an organization whose purpose is to provide economic, technical, or financial assistance to co-operatives.

**§ 1076.50-2 Objective of the Rural Development Loan Fund Program.**

(a) The objective of the Fund is to test the premise of community economic development financing concepts in rural areas. The program emphasizes an attack on rural poverty by organizations, representative of low-income area residents, experienced in dealing with economic development problems. It stresses group, rather than individual, efforts to provide expanded opportunities for rural residents to increase their ownership of, employment in, or income from local economic enterprise.

(b) In accomplishing this objective, the program seeks to coordinate and leverage its own resources with those of other government agencies and private sources. The Fund's monies should be complemented by provision

of ample technical assistance in order to enhance the ability of rural group ventures to grow and prosper. However, while encouraging the development of new and imaginative community development ventures, CSA will assure that the program's operations are conducted on a sound business basis.

(c) The Program's purpose is not only provision of loans and guaranties to eligible borrowers at the lowest reasonable cost, but also embraces the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in rural areas. To this end, the Program seeks to attract additional private capital into rural communities, build and expand the ability of rural institutions to better serve the economic needs of local residents, and provide new employment and ownership opportunities for low-income persons through group ventures and community development financing techniques.

**§ 1076.50-3 Organizations eligible for financial assistance under this program.**

(a) CSA will provide financial assistance in the form of loans or guaranties under this Program to carry out eligible activities directly or indirectly through relending or guarantying to the following types of organizations.

- (1) Community development corporations;
- (2) Community action agencies;
- (3) Supportive organizations of co-operatives;
- (4) Local co-operatives;
- (5) Public agencies;
- (6) Private non-profit groups;
- (7) Community-based organizations eligible for financial assistance under Title II of the EOA;
- (8) Community development credit unions;
- (9) Indian groups;

(b) Recipients who have received financial assistance for the purpose of re-lending or guaranteeing loans, may make loans and guaranties to:

- (1) The type of organizations listed in (a) above;
- (2) Low-income families; or
- (3) Businesses organized for-profit which are 50% owned or controlled by



low-income rural residents; or businesses organized for-profit which provide for significant increased income, or ownership, and/or employment opportunities for low-income rural residents and would not be retained, expanded, or moved into the rural areas without such assistance.

#### § 1076.50-4 Eligible activities.

(a) Loans and guaranties from CSA to a recipient under this program may be used only for business facilities and community development projects in rural areas. These also are the only acceptable activities for use of the monies which recipients have received for re-lending or guarantying purposes.

(b) Guaranties may be made for the purpose of (1) guarantying principal only, interest only, or both principal and interest; or (2) guarantying up to 90 per centum of any loan in either an exposed or subordinated position. Deposits in financial institutions to collateralize guaranties also may be made.

(c) Loans and guaranties under this program generally will not be made for refinancing existing debts of borrowers. Relenders must obtain prior CSA approval for any such exceptional refinancing activities.

(d) CSA encourages the use of flexible financing techniques. Thus, loans may be subordinated, or "wrapped around"; relenders may participate with banks and other financial institutions in extending credit or in purchasing existing loans. Loan or guaranty proceeds also may be used to invest in corporate stocks or debentures provided, of course, that such investment furthers the purposes of the Rural Development Loan Fund.

#### § 1076.50-5 Priorities.

In making assistance available to eligible organizations for business facilities and community development projects, CSA will give priority to those applications which can best demonstrate one or more of the following:

(a) *Program Priorities.* (1) A program emphasis which is likely to provide increased income, ownership and employment opportunities for low-income rural residents;

(2) A national, regional, or local approach to community economic development which enables institutions to become more sensitive and responsive to the economic needs of low-income rural residents.

(3) A strategy which will leverage other sources of financial and technical assistance so as to appreciably affect the creation of increased ownership and provide employment and income opportunities for low-income rural residents.

(4) The creation of a model-type of non-profit community economic development finance corporation which would be controlled by a governing body which meets the organizational priorities in (b)(2) below, independent and professionally operated, and provide long-term financial support for eligible economic development organizations.

(b) *Organizational priorities.* (1) A history of rural community economic development efforts or concern for the problems of low-income residents.

(2) A governing body representative of the organizations or persons to be served by the program.

(3) The ability to get low-income rural residents to cooperate and pool their talents and resources and to create or expand economic enterprise of a significant scale.

#### § 1076.50-6 Loans, interest on; allowable costs.

(a) Loans made under this subpart shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus such additional charge if any toward covering other costs of the program as the Director may determine to be consistent with its purposes, except that, for the five years following the date on which funds are initially available to the borrower, the rate of interest shall be set at a rate considered appropriate by the Director in light of the particular needs of the borrower which rate shall not be lower than 1 per centum.

(b) Interest repaid on loans, premiums earned on guaranties, investment

or interest income, service fees or other authorized financing charges collected may be retained by those recipients re-lending or guarantying funds with written CSA approval, and may be used to cover the costs of administering the loan and guaranty program authorized hereunder.

(c) Costs of administering the loan and guaranty program authorized hereunder shall include, but not be limited to, costs of program administration and management: i.e., monitoring and evaluation; costs of collection, other charges and provision of technical assistance and training; legal and accounting services; preparation of financial, planning, management, feasibility, technical, product development and marketing reports and studies, and development of additional grant, loan or guaranty applications and proposals.

§ 1076.50-7 Terms of loans and guaranties.

No loan or guaranty can be extended hereunder by CSA to a recipient for a term exceeding 30 years.

§ 1076.50-8 Application process.

(a) *Dates of submission.* Annually or more often, CSA will publish in the FEDERAL REGISTER the dates for submission of applications for assistance.

(b) *Processing procedures.* Applications to CSA for loans or guaranties under the Rural Development Loan Fund may be made at any time by written submission to: Rural Development Loan Fund Program, Office of Economic Development, Community Services Administration, 1200-19th Street, NW., Washington, D.C. 20506.

§ 1076.50-9 Contents of applications.

All applications to CSA for assistance shall contain:

(a) *Eligibility documents.* (1) Standard Form 424, Financial Assistance.

(2) Articles of Incorporation (or Association), Bylaws, and where applicable, IRC section 501(c)(3) determination letter. If applicant is a non-profit corporation without such an IRS letter, it must include a certification by an attorney that it is so organized and operated that it would be eligible for a section 501(c)(3) determination.

Cooperatives should submit their Articles or Certificate of Incorporation (Charter or Agreement of Association) and Bylaws.

(3) Description of its governing board and its representational nature, if applicable.

(4) Characteristics of the rural area where the project is to be located.

(5) Resumes of management team.

(6) Record of concern for and experience with community economic development on behalf of low-income rural residents.

(b) *Financial proposals.* (1) A full description of the proposed use of the requested financial assistance, whether it is a business facility or community development project, and how increased income, ownership or employment opportunities for low-income area residents will be provided. In order to assure CSA that there is reasonable assurance of repayment of the loan and that the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is being made, this description also should be accompanied by:

(i) A summary statement detailing the total cost of the project, delineating fixed assets and working capital, and explaining what other funds may be available or committed;

(ii) Detailed and realistic feasibility studies and cost analyses;

(iii) Audited financial statements for the immediately preceding three years or from the commencement of its operation, whichever period is shorter, and if funds will be used for the acquisition, preservation or expansion of an existing business, similar audited financial statements for such venture;

(iv) Cash-flow projections and pro forma financial statements and balance sheets estimated for three years, with the cash flow projections on a monthly basis and (pro forma) financial statement on a yearly basis;

(v) estimated purchase price for any proposed purchase of real property, accompanied by an independent appraisal of the property establishing that the proposed purchase price is reasonable;

(vi) A statement detailing what other conventional private sources or Federal, state or local programs have resources available, and why those resources are not being utilized for the proposed project.

(c) *Additional requirements for relending or guarantying.* If the assistance being requested is for relending or guarantying funds to other eligible recipients, applicants must also submit the information required by the next section.

**§1076.50-10 Loans and guaranties made by recipients to other eligible organizations.**

(a) Where the purpose of the financial assistance awarded by CSA to an organization is for relending or guarantying, the recipient, in addition to submitting the eligibility documents for itself, must submit its work program for such relending and guarantying activities. The work program must contain:

(1) Standards and criteria for relending and guarantying, including determinations of rates of interest, fees, terms, repayment schedules, collateral security, default and collection procedures and how the same may be adjusted.

(2) Basis for determining any priorities or preferences in awarding assistance.

(3) A plan for providing loan servicing including technical assistance, evaluation, and monitoring.

(b) When an applicant plans to relend or guaranty to low-income families or profit-making businesses, it must also show how such activity will contribute to community economic development and directly benefit rural residents.

(c) Applications to recipients with approved work programs for relending or guarantying under this subpart may be made at any time. CSA's Office of Economic Development will periodically publish in the **FEDERAL REGISTER** the names and addresses and amounts available from those organizations which CSA already has funded.

(d) Notice of availability of loans and guaranties from recipients with approved work programs shall be

given the widest possible publicity among potential eligible applicants. Such recipients, however, may utilize RFPs to limit the number and diversity of applications by subject matter areas and amounts with the express written consent of CSA. RFPs, where used, generally should state total funds to be made available thereunder and approximate number or size of the expected awards.

**§ 1076.50-11 Security.**

(a) *As a Credit Factor.* The availability of collateral security normally shall be considered as an important factor in making loans or guaranties. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. However, the taking of collateral as security should be considered in each loan making or guaranty transaction. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit. Endorsements or guaranties by other organizations, directors, or persons should be used only in unusual cases.

(b) *Security interests.* Security interests which may be taken by the lender or guarantor include but are not limited to liens on real or personal property, including leasehold interests, assignments of income and accounts receivable, and liens on inventory of proceeds of inventory sales, as well as marketable securities and cash collateral accounts.

(c) *Motor vehicles.* Liens ordinarily should be taken on licenses motor vehicles or boats purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(d) *Additional security.* The lender or guarantor may require collateral security or additional security at any time during the term of a loan or guaranty if after review and monitoring an assessment indicates the need for such security.

(e) *Insurance on property secured.* Ordinarily, hazard insurance up to the



amount of the loan or the depreciated replacement value of the property secured (whichever is less) will be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(f) *Appraisals.* Property serving as collateral security will be appraised by a qualified appraiser.

§ 1076.50-12 Post award requirements.

(a) *Applicability of CSA policies.* Financial assistance to recipients with approved work programs for relending or guarantying is subject to the conditions established in the loan agreement with CSA.

(b) *Deposits.* (1) Unless otherwise specifically agreed to in writing by CSA, loan proceeds and any interest thereon not immediately needed or disbursed by the borrower should be deposited in an interest bearing account or time deposit in a bank or other financial institution which can be fully covered by a form of federal deposit insurance.

(2) Deposits and accounts in financial institutions owned or controlled by minorities shall be encouraged provided they are adequately covered by a form of federal deposit insurance.

(3) Any interest or other income earned as a result of such accounts or deposits shall be used by the borrower only for the authorized purposes of the loan involved of its approved work program.

§ 1076.50-13 Liquidation; default.

Should the Director determine that it is necessary or desirable to take action to protect or further the interests of CSA in connection with any default or breach of conditions under any loan or guaranty made hereunder, the Director may:

(a) Declare that the loan is immediately due and payable.

(b) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his/her discretion and upon such terms and conditions as he/she shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by the Director in

connection with financial assistance extended hereunder.

(c) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by him/her and take such other actions in respect to such loans and guaranties as are necessary or appropriate, consistent with the objections of the Program and this subpart.

(d) In taking the actions provided for in paragraph (c) above the Director shall take into account such factors as:

(1) The inherent difficulty of creating or expanding rural enterprises which can offer real and increased ownership, employment and income opportunities for low-income persons.

(2) The need for new and more responsive national, regional and local financial institutions to serve low-income rural residents.

(3) The lead time, mobilization of resources, and leveraging required for rural residents to successfully pool their talents and abilities to engage in meaningful community economic development.

(4) The need for adequate technical assistance, training and skills development to accompany financial assistance for community-based, economic development efforts.

(5) The experimental and demonstrational nature of the program balanced with the desire to operate the program on a sound business basis.

(6) Other particular needs of the borrower.

§ 1076.50-14 Conflict of interest.

No recipient shall relend or guaranty to or for the benefit of:

(a) Any person who is also a board member of such recipient without specific prior CSA written approval given with knowledge of the relationship involved; or

(b) Any organization which has on its governing board or as agent, consultant or employee, a person who is also a board member of the recipient without specific prior CSA written approval given with knowledge of the relationship involved.

# CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

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## SUBCHAPTER A—GENERAL

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## SUBCHAPTER A—GENERAL

## PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C., as amended by Pub. L. 93-502.1100 issued under 5 U.S.C. 552.

SOURCE: 44 FR 22728, Apr. 17, 1979, unless otherwise noted.

## § 1100.1 Organization.

(a) The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965 (79 Stat. 845; 20 U.S.C. 951). The Foundation is composed of a National Endowment for the Arts, a National Endowment for the Humanities, and a Federal Council on the Arts and the Humanities. Each Endowment is headed by a Chairman and has a National Council composed of 26 Presidential appointees, with the Chairman of the Endowment also serving as Chairman of the Council. The purpose of the Foundation is to develop and promote a broadly conceived national policy of support for the humanities and the arts in the United States.

(b) The Endowments accomplish their missions primarily by providing financial assistance for projects in the arts and the humanities, including the making of fellowship and other awards to individuals as well as awards to non-profit organizations. By statute, awards made to organizations by the National Endowment for the Arts may not exceed one-half the cost of the project, except that a percentage of

the Arts Endowment's funds may be used for nonmatching grants to organizations which show that they have attempted unsuccessfully to secure funds equal to the amounts applied for.

(c) The organizational arrangement of the Foundation is as follows:

(1) *National Endowment for the Arts*—(i) *Office of the Chairman*. The Endowment is headed by the Chairman, who is also Chairman of the National Council on the Arts and a member of the Federal Council on the Arts and the Humanities. The Chairman, with the advice of the National Council on the Arts and the Federal Council on the Arts and the Humanities, is responsible for establishing Endowment policies and for developing and carrying out programs to provide support for projects and productions in the arts. The Chairman is assisted by two Deputy Chairmen, who are appointed by him. They are the Deputy Chairman for Policy and Planning and the Deputy Chairman for Programs.

(ii) *Program Activities of the Arts Endowment*. The activities of the Endowment are carried out with the aid of the following program offices:

- (A) Architecture, Planning and Design
- (B) Dance
- (C) Education
- (D) Expansion Arts
- (E) Federal State Partnership
- (F) Folk Arts
- (G) Literature
- (H) Media Arts
- (I) Museums
- (J) Music
- (K) Special Projects
- (L) Theatre
- (M) Visual Arts

Each of the above offices assists the Chairman in developing programs to provide support for activities in its area of interest.

(2) *National Endowment for the Humanities*—(i) *Office of the Chairman*. The Endowment is headed by the Chairman, who is also Chairman of the National Council on the Human-



ities and a member of the Federal Council on the Arts and the Humanities. The Chairman, with the advice of the National Council on the Humanities and the Federal Council on the Arts and the Humanities, is responsible for establishing Endowment policies and for developing and carrying out programs to provide support for research in the humanities, for strengthening the research potential of the United States in the humanities, or providing fellowships for training in the humanities, for fostering the interchange of information in the humanities and for fostering public understanding and appreciation of the humanities. The Chairman is assisted by a Deputy Chairman, who is appointed by him.

(i) Program Activities of the Humanities Endowment.

(A) The program activities of the Endowment are carried out through three divisions:

(1) The Division of Research and Publication.

(2) The Division of Fellowships and Stipends.

(3) The Division of Education and Special Projects.

(B) The Division of Research and Publication supports research and programs to strengthen the research potential of the United States, as well as to encourage the preparation of scholarly works in the humanities.

(C) The Division of Fellowships and Stipends supports individual scholarship and training by providing individuals with time uninterrupted by other responsibilities.

(D) The Division of Education and Special Projects provides support primarily to institutions—schools, colleges, universities, museums, public agencies, and private nonprofit groups to increase public understanding and appreciation of the humanities.

#### § 1100.2 Procedures and transaction of business.

(a) *Inquiries and transaction of business.* All inquiries, submittals or requests should be addressed as follows: (1) Those involving the work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, Washington,

D.C. 20506, or a member of the public may call at the Endowment's offices at 2401 E Street, N.W., Washington, D.C. during normal business hours which are 9 a.m. to 5:30 p.m., Monday through Friday; (2) requests involving the National Endowment for the Humanities should be addressed to the National Endowment for the Humanities, Washington, D.C. 20506, or a member of the public may call at the Endowment's offices at 806 15th Street, N.W., Washington, D.C. during normal business hours which are 9 a.m. to 5:30 p.m., Monday through Friday. If a person is uncertain as to which organization an inquiry should be addressed, he should address his inquiry to the National Foundation on the Arts and the Humanities, Washington, D.C. 20506.

(b) *General method of functioning, procedures, forms, descriptions of programs.* In general, the Endowments provide financial support for activities in the arts and humanities on the basis of applications submitted by the person or organization desiring support. In general, such awards are made on a merit basis after a review process involving staff members and outside experts. The endowments publish various announcements and booklets describing their programs and explaining their procedures. "Guide to Programs—National Endowment for the Arts, 1977/1978" provides a comprehensive description of the programs, functions and procedures of the National Endowment for the Arts. Forms or instructions for application to participate in the programs of the Endowment are obtainable on request. All program announcements, publications or application forms may be obtained by applying either to the National Endowment for the Arts or the National Endowment for the Humanities or by calling in person at their Washington offices.

#### § 1100.3 Availability of information to the public.

##### § 1100.3-1 Statement of policy.

(a) The Chairman of the National Endowment for the Arts and the Chairman of the National Endowment for the Humanities are responsible for

effective administration of the provisions of Pub. L. 89-487, as amended. The Chairman of each Endowment shall carry out this responsibility through the program and the officials as hereinafter provided in this Part.

(b) In addition, the Chairman of each Endowment, pursuant to his responsibility hereby directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information and records in accordance with the provisions of § 1100.3-3 of this part.

§ 1100.3-2 Current index.

(a) Each Endowment shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefore made in accordance with § 1100.3-3 of this Part.

(b) The index for each Endowment shall be available at the Office of the General Counsel, National Endowment for the Arts and the Office of the General Counsel, National Endowment for the Humanities respectively.

§ 1100.3-3 Requests for records.

(a) Requests for access to records of the National Endowment for the Arts and the National Endowment for the Humanities may be filed by mail or in person with the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment between 9 a.m. and 5:30 p.m., Monday through Friday, except holidays.

(b) All requests should reasonably describe the record or records sought; and

(c) Any request submitted in writing should be clearly identified as a re-

quest made pursuant to the Freedom of Information Act by labelling the envelope with the letters FOIA.

§ 1100.3-4 Procedures on requests for documents.

(a) *Determination of compliance with requests for document.* (1) Upon request by any member of the public for documents made in accordance with the rules of this part the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request or his delegate in his absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request within ten (10) days (excepting Saturdays, Sundays and legal public holidays) after receipt by the Endowment of such request.

(3) The Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment shall immediately notify the party making such request of the determination made, the reasons therefore, and, in the case of a denial of such request, shall notify the party of his right to appeal that determination to the Chairman of the involved Endowment.

(b) *Appeals from adverse determination (denial of request).* (1) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment may appeal such determination. Any such appeal shall be addressed to the Chairman, National Endowment for the Arts, Washington, D.C. 20506 or the Chairman, National Endowment for the Humanities, Washington, D.C. 20506, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Deputy Chairman for Policy and Plan-

ning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment in the case of a total denial of the request or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment, the Chairman of the involved Endowment or the Chairman's specific delegate in his absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt by the Endowment of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall notify the party submitting the appeal and shall notify such person of the provisions of 5 U.S.C. 552(a)(4)(B), as amended, regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman, National Endowment for the Arts, or the Chairman, National Endowment for the Humanities, and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances as specified in this paragraph, the time limits prescribed with respect to initial actions or actions on appeal may be extended by written notice from the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request to the person making the request. Such notice shall set forth the reason for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the

extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by either Endowment to meet the time limitation.* Failure by either Endowment to deny or grant any request for documents within the time limits prescribed by the FOIA (5 U.S.C. 552, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

#### § 1100.3-5 Foundation report of actions.

On or before March 1 of each calendar year, the National Foundation on the Arts and the Humanities shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by the National Foundation on the Arts and the Humanities not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reason for the action upon each appeal that results in the denial of information.

(c) The names and titles or positions of each person responsible for the denial of records requested under the



provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), as amended, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Foundation implementing the provisions of the FOIA.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer the provisions of the FOIA, as amended.

**§ 1100.4 Schedule of fees for search and duplication of records.**

**§ 1100.4-1 General schedule.**

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants.

**§ 1100.4-2 Schedule.**

Fees which may be charged by the Foundation for search and duplication of records are as follows:

(a) *Duplication fees.* \$2 for the first six (6) pages, five (5¢) cents per page thereafter for photocopying.

(b) *Search fees.* \$8 per hour to search records for specific documents plus transportation costs of personnel arising from searches for requested information.

**PART 1105—STANDARDS OF CONDUCT OF EMPLOYEES**

Sec.

1105.735-1 Purpose.

1105.735-2 Scope.

1105.735-3 Definitions.

1105.735-4 Statutory provisions.

1105.735-5 Conflicts-of-Interest Counselor.

1105.735-6 Statements of employment and financial interests.

1105.735-7 Employee conduct.

1105.735-8 Presenting grievances to Congress.

APPENDIX—RELATED STATUTORY PROVISIONS

**AUTHORITY:** Executive Order 11222 of May 8, 1965, 3 CFR, 1965 Supp.; 5 CFR 735.104.

**SOURCE:** 32 FR 17663, Dec. 12, 1967, unless otherwise noted.

**§ 1105.735-1 Purpose.**

While confident of the integrity and sense of responsibility of the employees of the National Endowment for the Arts and the National Endowment for the Humanities, it is essential to the Government and to the conduct of the business of the National Endowment for the Arts and the National Endowment for the Humanities that unusually high standards of honesty, integrity, impartiality, and conduct be maintained by employees of the Endowments. In accordance with these concepts, this part sets forth policies and procedures of the Endowments with respect to employee conduct, certain permissible and prohibited outside activities, and possible conflicts-of-interest situations.

**§ 1105.735-2 Scope.**

The policies and procedures contained in this part apply to all employees of the Endowments, except that specific provision is made in § 1105.735-6-(b) for the filing of Statements of Employment and Financial Interests by special Government employees.

**§ 1105.735-3 Definitions.**

(a) "Employee" means an officer or employee of the National Endowment for the Arts or the National Endowment for the Humanities or a member of the shared staff of both Endowments. The term "employee" includes both a "regular employee" (as defined in this section) and a "special Government employee" unless expressly qualified.

(b) "Regular employee" means a person holding an appointment in the competitive or excepted service, occupying a position on the staff of either Endowment or the shared staff of both Endowments, without regard to assigned working schedule (that is, including full-time, part-time and intermittent schedules), but excluding all "special Government employees" who have not been designated as "regular

employees" by the Chairman of either Endowment for purposes of these regulations.

(c) "Full-time employee" means a "regular employee" with an assigned full-time working schedule.

(d) "Part-time employee" means a "regular employee" with an assigned part-time (less than 40 hours a week) work schedule.

(e) "Intermittent employee" means a "regular employee" with an assigned intermittent working schedule.

(f) "Shared staff" and "joint employees" mean employees performing services for both Endowments on a shared basis.

(g) "Special Government employee" means a "special Government employee" as defined in section 202 of title 18 of the United States Code who is employed by the National Endowment for the Arts or the National Endowment for the Humanities, or by both Endowments jointly.

(h) "Endowment" means either the National Endowment for the Arts or the National Endowment for the Humanities.

(i) "Foundation" means the National Foundation on the Arts and the Humanities.

(j) "Chairman" means the Chairman of the National Endowment for the Arts, or the Chairman of the National Endowment for the Humanities.

(Sec. 10, 79 Stat. 852 as amended 82 Stat. 186, 84 Stat. 443 (20 U.S.C. 959))

[38 FR 3511, Feb. 7, 1973]

#### § 1105.735-4 Statutory provisions.

Each employee is responsible for acquainting himself not only with the provisions of this part, but also with applicable portions of each Federal statute relating to his conduct as an employee of the National Endowment for the Arts or the National Endowment for the Humanities and of the U.S. Government. This part will be called to the attention of all employees by the Administrative Officer of the Foundation at least once a year and he will provide a copy of the part to each new employee who joins either the National Endowment for the Arts or the National Endowment for the Humanities or becomes a member of the shared staff. (A list of pertinent

statutes is provided in the Appendix to this part.)

#### § 1105.735-5 Conflicts-of-Interest Counselor.

(a) *Conflicts-of-Interest Counselor.* The General Counsel of the Foundation is designated the Conflicts-of-Interest Counselor, with responsibility for providing, on request from any employee, counsel regarding conflicts-of-interest regulations and requirements, as well as their applicability in particular situations. Each employee is responsible for seeking the advice of the Conflicts-of-Interest Counselor whenever it appears that he may be, or may become, involved in a possible conflicts-of-interest situation. Any supervisor may refer to the Conflicts-of-Interest Counselor any possible conflicts-of-interest situation involving a subordinate of his whenever he deems such action appropriate. In such cases, the subordinate concerned shall be informed that the matter has been referred for consideration and shall be afforded the opportunity to state his case. The General Counsel of the Foundation is responsible for reviewing conflicts-of-interest matters brought to his attention and for attempting to work with the employees concerned in resolving such situations, and for offering employees an opportunity to explain any conflict or appearance of conflict. Matters which cannot be satisfactorily resolved in this manner will be referred to the Chairman of the Endowment concerned, or, in the case of a shared staff member, to the Chairmen of both Endowments, for decision and appropriate action. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

(b) *Disciplinary and other remedial actions.* When there is a final decision that a conflicts-of-interest situation requires disciplinary or other remedial action, such action shall be taken promptly to end the conflict or appearance of conflict of interest and to carry out any appropriate disciplinary measure. Any action taken, whether disciplinary or otherwise, shall be ef-

fectured in accordance with applicable laws, Executive orders, Civil Service Commission regulations and the regulations in this part. The action taken may involve, among other things:

- (1) Divestment by the employee of his conflicting interest;
- (2) Changes in existing duties;
- (3) Disqualification for a particular assignment;
- (4) Appropriate disciplinary action, up to and including removal.

[32 FR 17663, Dec. 12, 1967, as amended at 33 FR 494, Jan. 13, 1968]

§ 1105.735-6 Statements of employment and financial interests.

(a) *Employees other than special Government employees*—(1) *General requirement.* Statements of employment and financial interests are required of all Federal employees occupying positions at or above Grade 16 or the equivalent, as well as all employees occupying positions which either require the exercise of judgment in making a Government decision, or in taking Government action with regard to:

- (i) Contracting or procurement;
- (ii) Administering or monitoring grants or subsidies;
- (iii) Regulating or auditing private or other non-Federal enterprises;
- (iv) Other activities where the decision or action has an economic impact on the interest of a particular non-Federal enterprise; or

require the incumbent to report in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law.

(2) *Requirements of the National Endowment for the Arts and the National Endowment for the Humanities.* In order to fulfill the Endowments' obligations under the general Government requirement described in paragraph (a)(1) of this section, it has been determined that a Statement of Employment and Financial Interests must be completed and submitted in accordance with the procedures set forth in this section by employees occupying the following positions:

(i) National Endowment for the Arts:

- (a) Deputy chairman.

(b) All special assistants to the chairman and deputy chairman.

(c) All program, division and office directors.

(ii) National Endowment for the Humanities:

(a) Deputy chairman.

(b) All assistants (including special assistants) to the chairman and deputy chairman.

(c) All program and office directors (but not including the Public Information Director).

(d) All program officers classified at GS-13 and above.

(iii) Shared staff:

(a) All attorneys.

(b) Director and Assistant Director of Administration.

(c) All auditors classified at GS-13 and above.

(d) Financial manager.

(e) Administrative services officer.

(f) All grants officers.

(3) *Inclusion and exclusion of positions.* (i) Whenever appropriate, the Chairman of an Endowment may amend paragraph (a)(2) of this section to include additional positions in his Endowment that entail submission of such statements or may exclude any positions in his Endowment listed in paragraph (a)(2) of this section the inclusion of which is not required by the general requirement in paragraph (a)(1) of this section. Inclusion or elimination of shared positions will be accomplished by agreement of both Chairmen. Each supervisor is responsible for bringing to the attention of the appropriate Chairman (through the Deputy Chairman) any position which the supervisor believes should be covered or excluded by this requirement.

(ii) If an employee believes that his position has been improperly included among those for which a Statement of Employment and Financial Interests is required, he may bring this matter, via the Foundation's grievance procedures, to the attention of the appropriate Deputy Chairman or, in the case of shared staff, to the attention of both Deputy Chairmen. In the event that the recommendation is made that the position be included, the employee may appeal to the Chairman of the Endowment concerned, or, in the case of shared staff,



to both Chairmen, whose ruling shall be final.

(iii) Although an employee's position may generally be included within the terms of paragraph (a)(1) of this section, such position may be excluded from the reporting requirement when it is determined that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(4) *Submission of original and supplementary statements.* Each employee covered by this requirement shall complete the statement and submit it within 90 days after the effective date of this part. Each new employee shall complete and submit the statement within 30 days after his entrance on duty or within 90 days after the effective date of this part, whichever date is later. All changes in, or additions to, the information contained in each employee's original statement must be reported in a supplementary statement submitted by the employee as of June 30 each year. If no changes or additions occur a negative report is required. Notwithstanding the filing of the annual report required by this subparagraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of title 18, U.S.C., or § 1105.735-7 of this part. The Administrative Office of the Foundation is responsible for informing each new, affected employee of the requirement for him to submit the statement within 30 days after his entrance on duty.

(5) *Interests of employees' relatives.* For purposes of the statement, the interests of a spouse, minor child, or any other member of an employee's immediate household who is a blood relation of the employee, are considered to be interests of the employee.

(6) *Information not known by employees.* If information required to be included on the statement of employment and financial interests (supplementary or otherwise, including holdings placed in trust) is not known by the employee but is known to another person, the employee shall request such other person to submit the information on his behalf.

(7) *Information not required.* Employees are not required to submit information relating to their financial interests in any professional society not conducted as a business enterprise as described in the next sentence, charitable, religious, social, fraternal, recreational, public service, civic, political, or similar organization not conducted as a business enterprise. Professional societies, educational institutions, and other nonprofit organizations engaged in research, development, or related activities involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in employees' statements of employment and financial interests.

(8) *Effect of employees' statements on other requirements.* The statements of employment and financial interests and supplementary statements required of employees are in addition to, and are not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or Executive order. The submission of the statement or supplementary statement by an employee does not permit him or any other person to participate in any matter in which his or the other person's participation is prohibited by law, regulation, or Executive order.

(9) *Confidentiality of employees' statements.* Each statement of employment and financial interest and each supplementary statement will be held in strictest confidence. The officials designated below to receive such statements will not allow access to, or information to be disclosed from, a statement except to carry out a purpose of this part. Information will not be disclosed from the statement except as the Civil Service Commission or the appropriate Chairman (or Chairmen,

in the case of shared staff members) may authorize for good cause shown.

(10) *Review of statements.* (i) Each Deputy Chairman will submit his statement to the appropriate Endowment Chairman.

(ii) Employees of either Endowment shall submit their statements to the Deputy Chairman of that Endowment.

(iii) Joint employees shall submit their statements to both Deputy Chairmen.

(iv) When a statement submitted under paragraph (b)(2) or (3) of this section indicates a conflict between the interests of an employee and the performance of his services for the Government and when the conflict or appearance of conflict cannot be resolved by the Deputy Chairman (or by both Deputy Chairmen in the case of joint employees), he shall report the information concerning the conflict or appearance of conflict to the Chairman through the General Counsel. In the case of joint employees, information concerning the conflict or appearance of conflict shall be reported to both Chairmen. The employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

(b) *Special Government employees.* (1) Each special Government employee shall submit a statement of employment, and, unless otherwise directed, a statement of financial interests not later than the time of his employment. It is necessary that the special Government employee report all Federal and non-Federal employment, and, when a statement of financial interests is required, those financial interests which relate, either directly, or indirectly, to his Foundation responsibilities or duties.

(2) Each special Government employee must file a supplementary statement of employment and financial interests whenever a significant change occurs, either in his employment or financial interests, in order that his statement may be kept current.

(3) The provisions of paragraph (a)(5) through (9) of this section apply to special Government employees in

the same manner as to other employees.

(Sec. 10, 79 Stat. 852, as amended at 82 Stat. 186, 84 Stat. 443 (20 U.S.C. 959))

[32 FR 17663, Dec. 12, 1967, as amended at 38 FR 3512, Feb. 7, 1973]

§ 1105.735-7 Employee conduct.

(a) *General.* (1) Each Endowment assumes that an employee will conduct himself in a manner that will not discredit or embarrass himself or the Endowment. However, it is pointed out that the violation of the regulations in this part, or any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct on the part of an employee (whether in official duty status or not), is cause for immediate disciplinary action, up to and including removal.

(2) Employees shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of:

(i) Using public office for private gain;

(ii) Giving preferential treatment to any person;

(iii) Impeding Government efficiency or economy;

(iv) Losing complete independence or impartiality;

(v) Making a Government decision outside official channels; or

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Indebtedness.* Employees are expected to meet their just financial obligations and not to take advantage of the fact that their wages are not subject to garnishment for private debts. Failure to meet just financial obligations in a proper and timely manner may result in disciplinary action, up to, and including, removal. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require

the Endowment concerned to determine the validity or amount of the disputed debt.

(c) *Payment of taxes.* Employees are expected to meet their obligations for payment of taxes to Federal, State, and local authorities. Delinquency in payment of Federal, State, and local taxes is cause for disciplinary action, up to, and including, removal. Federal agencies are required to furnish State taxing authorities (including the District of Columbia) with a copy of Form W-2 indicating annual earnings and Federal income tax withheld. Employees are authorized to pay delinquent Federal taxes by payroll deduction: *Provided*, That they make satisfactory arrangements with the Internal Revenue Service to liquidate their tax liabilities in this manner. When such arrangements are not made, District Directors of Internal Revenue have the authority to levy upon the salaries of Federal employees for the full amount of delinquent Federal income tax.

(d) *Financial interests.* Any employee may hold financial interests and engage in financial transactions in the same way as any private citizen, provided that such interests or activities are not prohibited by law, Executive order, or the regulations in this part. In particular, no employee may have any direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his duties and responsibilities as an Endowment employee. No employee shall carry out Endowment duties involving any organization in which he has a direct or indirect financial interest. No employee shall engage directly or indirectly in any financial transaction resulting from, or primarily relying on, information obtained through his employment, or use his employment to coerce, or give the appearance of coercing, a person, to provide financial benefit to himself or another.

(e) *Participation in Endowment grants by former Endowment employees.* In cases not directly coming under the prohibitions of 18 U.S.C. 207 (relating to activities of former Government officials), the following rules shall apply:

(1) In addition to the statutory bars against ever dealing with the U.S.

Government in connection with a particular matter in which he participated personally and substantially while an employee, and against dealing with the Government for 1 year after leaving in connection with a matter under his official responsibility while in the Government, a former regular employee of an Endowment may not negotiate with either Endowment, with a view to obtaining support for himself or his organization within 1 year after having left the Endowment, except with the written permission of the Chairman of the Endowment in which he had been employed.

(2) A former regular employee of an Endowment may not be compensated from an Endowment grant directly or indirectly within 1 year of his leaving the Endowment, except with the written permission of the Chairman of the Endowment in which he had been employed.

(3) In the case of joint employees, the written permission referred to in paragraphs (e)(1) and (2) of this section must be given by both Chairmen.

(f) *Gifts, entertainment, and favors.* Employees may not solicit, or accept directly or indirectly from any person, institution, corporation, or group, anything of economic value as a gift, gratuity, favor, entertainment, or loan, which might be reasonably interpreted by others as being of such a nature that it would affect his impartiality. This is especially applicable in those instances where the employee has reason to believe that the person, institution, corporation, or group:

(1) Has, is seeking, or is likely to seek, assistance, support, or funds from an Endowment; or

(2) Conducts operations or activities which are involved with, or are supported by, an Endowment; or

(3) Has interests which might be substantially affected by the employee's performance or nonperformance of duties; or

(4) May be attempting to affect the employee's official actions.

(i) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5



U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(ii) Employees are not permitted to accept a gift, or decoration, or other objects from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(iii) Employees may accept promotional material of nominal intrinsic value such as pens, pencils, note pads, calendars, etc. Employees may, on infrequent occasions, accept items of nominal value such as food in the ordinary course of a luncheon or dinner meeting, site visit, or professional conference, when the employee is properly in attendance.

(iv) Neither this paragraph nor paragraph (g) of this section precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

(g) *Outside employment and other activity.* (1) Employees shall not engage in any outside employment or other outside activity not compatible with the full and proper discharge of their duties and responsibilities. Incompatible activities include, but are not limited to, acceptance of anything of monetary value which may result in or create the appearance of a conflict of interest.

(2) Employees shall not engage in outside employment which tends to impair their health or capacity to discharge acceptably their duties and responsibilities.

(3) Regular employees shall not receive anything of value from a private source as compensation for their activities as endowment employees.

(4) Employees shall not engage in teaching, lecturing, or writing which is dependent on official information obtained as a result of Government employment, except when the information has been, or is being made available to the general public, or will be made available to the public on request, or when the Chairman or Deputy Chairman of the Endowment concerned gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. However, employees are encouraged to engage in teaching, lecturing, and writing not prohibited by the regulations in this part, by law, or by Executive order.

(5) Employees shall not receive anything of monetary value for any consulting, lecturing, discussion, writing, or presentation, the subject of which is devoted to the responsibilities, programs, or operations of an Endowment, or which draws on official data or ideas which have not become part of the body of public information.

(6) Employees shall not serve as organizers or directors of conferences, colloquia or similar events supported by grant or contract from an Endowment, but may otherwise participate in such events provided they do not receive any compensation or economic benefit for such participation.

(7) Employees may, however, participate in the affairs of, and accept an award for meritorious public contribution or achievement given by a charitable, religious, fraternal, educational, recreational, public service, or civic organization.

(h) *Advice or assistance to nonprofit or commercial organizations.* The conditions under which full-time employees may offer assistance or advice to nonprofit or commercial organizations are set forth in this paragraph (h). Although these conditions are stated as general rules, illustrative applications to specific situations are set forth as an aid to interpretation:

(1) *General rules.* While not on official duty, an employee may provide advice or assistance and receive com-

pensation therefor, to either nonprofit or commercial organizations: *Provided*, That such services are unrelated to his Government activities and do not draw upon information deriving from Government sources not publicly available.

(2) *Specific examples.* (i) *Visiting committees.* Employees should not participate in the deliberations of a college or university visiting committee; however, an employee may meet with such groups as an Endowment official where it would be appropriate to attend a similar meeting with any other comparable group requesting his assistance.

(ii) [Reserved]

(iii) *Membership and office holding in professional societies.* An employee may be a member of a professional society, but may not serve as an officer except where the society has not received any support from an Endowment during the preceding three years and the employee has no reason to expect it to seek support during the tenure of his office. If the society later requests support from an Endowment, the employee should resign his office in the society or request permission to remain in such office.

(i) *Misuse of information.* For the purpose of furthering a private interest, employees shall not (except as provided in paragraph (g)(4) of this section) directly or indirectly use, or allow the use of, official information obtained through, or in connection with, his Government employment which has not been made available to the general public.

(j) *Compensation from endowment awarded funds.* No regular employee may receive any compensation, either directly or indirectly, from funds awarded to contractors or grantees by either endowment.

(k) *Use of Federal property.* No employee may use Federal property or facilities of any kind for other than officially approved activities. Every employee has the responsibility to protect and conserve all Federal property which has been entrusted to him.

(l) *Exercise of notary powers.* Employees who are notaries public may not charge or receive any compensation for performing any notarial act

during working hours, including the luncheon period.

(m) *Political activity.* Restrictions in this section are applicable to employees on leave, leave without pay, or furlough, as well as to other regular employees. Individuals whose employment is on an intermittent basis (not occupying a substantial portion of their time) are subject to the political activities restrictions only while they are in an active duty status. The period of active duty status for a particular employee includes the entire 24-hour period of any day of actual employment. The "Federal Personnel Manual" may be consulted in the Foundation Administrative Office. If an employee is in doubt about permissible activities, he should contact the Administrative Office for clarification.

(1) Employees may not use their official positions or influence for the purpose of interfering with an election and they may not take an active part in political management or in political campaigns, except as provided in paragraphs (m) (4) and (5) of this section.

(2) No employee may discriminate against another employee because of his political opinions or affiliations.

(3) An employee may not become a candidate for nomination or election to a Federal, State, county, or municipal office on a partisan political ticket. Nor may an employee become a candidate as an independent when opposed by a partisan political candidate, except as provided in paragraph (m)(4) of this section.

(4) Certain political subdivisions in the vicinity of Washington, D.C., as well as other municipalities, designated by the Civil Service Commission, have been granted a limited exception to the rules prohibiting political management or candidacy for local office. In such municipalities, employees may become candidates as independents, even when opposed by partisan political candidates.

(5) In general, employees are encouraged to be candidates for, and to hold, State, county, or municipal offices of a nonpartisan nature when permitted by law. Employees desiring to be candidates for, or to hold, a State or local office or to undertake the political management of a candidacy for such

office, must secure the approval of the appropriate Endowment Chairman or, in the case of members of the shared staff, of both Chairmen.

(6) Full-time employees, with the prior consent of the Chairman concerned, or of both Chairmen, in the case of members of the shared staff, may hold positions under a State or local government on a part-time basis only. Intermittent employees may hold full-time or part-time State or local government positions. In both cases, the above restrictions on political activity must be observed.

(n) An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, such as a lottery or the sale or purchase of numbers, etc.

(Sec. 10, 79 Stat. 852, as amended 82 Stat. 186, 84 Stat. 443 (20 U.S.C. 959))

[32 FR 17663, Dec. 12, 1967, as amended at 38 FR 3512, Feb. 7, 1973]

#### § 1105.735-8 Presenting grievances to Congress.

Nothing in this part shall be construed as abridging in any way the right of employees, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information, when appropriate, to either House of Congress, or to any committee or member thereof.

#### APPENDIX—RELATED STATUTORY PROVISIONS

The following is a list of statutes related to the conduct of Government employees and consultants. Upon request, pertinent excerpts of these statutes will be made available by the Administrative Office of the Foundation.

1. House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

2. Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

4. The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

5. The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

6. The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

7. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

8. The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a. (c)).

9. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

10. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

11. The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

12. The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

13. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

14. The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

15. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

16. The prohibition against proscribed political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

17. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[32 FR 17663, Dec. 12, 1967, as amended at 33 FR 494, Jan. 13, 1968]

#### PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

##### Sec.

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1110.2 Application of part.

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##### APPENDIX A

AUTHORITY: Sec. 602, 78 Stat. 252 and sec. 10(a)(1), 79 Stat. 852.



SOURCE: 38 FR 17991, July 5, 1973, unless otherwise noted.

#### § 1110.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Endowment for the Arts or the National Endowment for the Humanities.

#### § 1110.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the National Endowment for the Arts or the National Endowment for the Humanities including the federally assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the part, including assistance pursuant to an application approved prior to such date. It also applies to federal financial assistance extended to any such program prior to the effective date of this part under a contract or grant where the term of the contract or grant continues beyond such date or where the assistance was to provide real or personal property and the recipient or his transferee continues to use or retain ownership or possession of the property (see § 1110.4(a)(1)). This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contract, (b) any assistance to any individual who is the ultimate beneficiary under any such program, or (c) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 1110.3. The fact that a program or activity is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered.

Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

#### § 1110.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected, to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous dis-

crimatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training or (ii) to provide work experience which contributes to the education or training of such individuals or (iii) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to

which this regulation applies, the provisions of the foregoing subparagraph of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

#### § 1110.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer; and any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program. The responsible Endowment official shall specify

the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipients shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Endowment to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Endowment official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Chairman of the Endowment concerned may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forebear the exercise of such right to revert title for



so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2)

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Endowment official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance, the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a

final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Endowment official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in, such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

#### § 1110.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the activities for which Federal financial assistance is provided by the Endowments. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university, unless it satisfies the responsible Endowment official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(b) In cases of Federal financial assistance to elementary or secondary schools, discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a training grant to a nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution, discrimination is prohibited with respect to any educational activity, any provision of medical or other services and any financial aid to individuals incident to the program.

(d) Where Federal financial assistance is provided to assist in the presentation of artistic and cultural productions to the public, assurances will be required that such productions will not be presented before any audience which has been selected on a discriminatory basis.

(e) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus, a State, in selecting projects to be supported through a State agency, may not base its selections on criteria which have

the effect of defeating or substantially impairing accomplishment of the objectives of the Federal financial assistance as respects individuals of a particular race, color, or national origin.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1110.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

#### § 1110.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Endowment official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Endowment official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Endowment official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Endowment official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Endowment official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

#### § 1110.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Endowment official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Endowment official a written complaint. A complaint must be filed not later than ninety days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Endowment official.

(c) *Investigations.* The responsible Endowment official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Endowment official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1110.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Endowment official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any



investigation, hearing, or judicial proceeding arising thereunder.

**§ 1110.8 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1110.4.* If an applicant fails or refuses to furnish an assurance required under § 1110.4 or otherwise fails to comply with that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Endowment concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that such Endowment shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Endowment official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearings, of a failure by the applicant or recipient to comply with a requirement imposed by

or pursuant to this part, (3) the action has been approved by the Chairman of the Endowment concerned, and (4) the expiration of 30 days after the Chairman has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Endowment official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

**§ 1110.9 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1110.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Endowment

official that the matter be scheduled for hearing or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right of a hearing under section 602 of the Act and § 1110.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Endowment concerned in Washington, D.C., at a time fixed by the responsible Endowment official unless he determines that the convenience of the applicant or recipient or of the Endowment requires that another place be selected. Hearings shall be held before the responsible Endowment official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Endowment shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.*

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Endowment and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the

notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence entered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this Regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Chairman of the Endowment concerned may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 1110.10.

#### § 1110.10 Decisions and notices.

(a) *Decision by person other than the responsible Endowment official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Endowment official for a final deci-

sion, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Endowment official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Endowment official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Endowment official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Endowment official.

(b) *Decisions on record or review by the responsible Endowment official.* Whenever a record is certified to the responsible Endowment official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Endowment official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Endowment official shall be given in writing to the applicant or recipient and to the complainant if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1110.9(a) a decision shall be made by the responsible Endowment official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Endowment official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Chairman.* Any final decision of a responsible Endowment official (other than the Chairman) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Chairman, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Endowment official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation. (An elementary or secondary school or school system which is unable to file an assurance of compliance with § 1110.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 1110.4(c), and provides reasonable assurance that it will comply with this court order or plan.)

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the re-



sponsible Endowment official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Endowment official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Endowment official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Endowment official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1110.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1110.12 Effect on other regulations; forms and instructions.

(a) *Effects on other regulations.* Nothing in this part shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder or any other regulations or instructions insofar as such order, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Endowment official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effec-

tuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Chairman of an Endowment may from time to time assign to other officials of the Endowment or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part, including the achievement of effective coordination and maximum uniformity within the Endowment and within the executive branch of the Government in the application of title VI and this part of similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this agency.

§ 1110.13 Definitions.

As used in this part:

(a) The term "Foundation" means the National Foundation for the Arts and the Humanities, and includes the National Endowment for the Arts, the National Endowment for the Humanities, and each of their organizational units.

(b) The term "Endowment" means the National Endowment for the Arts or the National Endowment for the Humanities.

(c) The term "Chairman" means the Chairman of the National Endowment for the Arts or the Chairman of the National Endowment for the Humanities.

(d) The term "responsible Endowment official" with respect to any program receiving Federal financial assistance means the Chairman of any Endowment or other Endowment official designated by the Chairman.

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of

the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or the donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity involving the provision of services, financial aid, or other benefits to individuals (including education or training, health, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for provision of facilities for furnishing services, financial aid or other benefits to individuals. The service, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal proper-

ty or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipients" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purposes of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Endowment official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

## APPENDIX A

### FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Assistance to groups for projects and productions in the arts.
2. Surveys, research and planning in the arts.
3. Assistance to State arts agencies for projects and productions in the arts.
4. Support of research in the humanities.
5. Support of educational programs in the humanities, including the training of students and teachers.
6. Assistance to promote the interchange of information in the humanities.
7. Assistance to foster public understanding and appreciation of the humanities.
8. Support of the publication of scholarly works in the humanities.

**PART 1115—PRIVACY ACT  
REGULATIONS**

**Sec.**

- 1115.1 Purpose and scope.
- 1115.2 Definitions.
- 1115.3 Procedures for notification of existence of records pertaining to individuals.
- 1115.4 Procedures for requests for access to or disclosure of records pertaining to an individual.
- 1115.5 Correction of records.
- 1115.6 Disclosure of records to agencies or persons other than the individual to whom the record pertains.
- 1115.7 Exemptions.

**AUTHORITY:** 5 U.S.C. 552a(f).

**SOURCE:** 40 FR 49286, Oct. 21, 1975, unless otherwise noted.

**§ 1115.1 Purpose and scope.**

This part sets forth the National Foundation on the Arts and the Humanities' procedures under the Privacy Act of 1974 as required by 5 U.S.C. 552a(f). Internal guidance for Foundation staff and other regulations implementing the Privacy Act are contained or will be contained in Foundation circulars.

**§ 1115.2 Definitions.**

For purposes of this part:

(a) "Foundation" means the National Foundation on the Arts and the Humanities.

(b) "Act" means the Privacy Act of 1974 (Pub. L. 93-579).

(c) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) "Maintain", used with reference to a record means to collect, to use, to disseminate, to have control over and responsibility for such record.

(e) "Record" means any item, collection or grouping of information about an individual that is maintained by the Foundation and that is retrievable by his or her name or an identifying particular, such as a number, symbol, fingerprint, or photograph of the individual. Information maintained by the Foundation includes, but is not limited to, education, financial transactions, medical history, employment history and criminal history.

(f) "Routine use" means, with respect to the disclosure of a record, the use of such a record for a purpose

which is compatible with the purpose for which it was collected. The routine uses of record systems maintained by the Foundation were established pursuant to notice in the **FEDERAL REGISTER**.

(g) "System of records" means a group of any records under the control of the Foundation from which information about an individual is retrievable by his or her name or by some identifying particular.

**§ 1115.3 Procedures for notification of existence of records pertaining to individuals.**

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by the National Foundation on the Arts and the Humanities are listed annually in the **FEDERAL REGISTER** as required by that Act. Any person who wishes to know whether a system of records contains a record pertaining to him may appear in person at the National Endowment for the Arts, Room 1338, 2401 E Street NW., Washington, D.C. 20506 or the National Endowment for the Humanities, Room 1000, 806 15th Street NW., Washington, D.C. 20506, on work days between the hours of 9:00 a.m. and 5:30 p.m. or by writing to the Office of the General Counsel, National Endowment for the Arts or National Endowment for the Humanities, Washington, D.C. 20506. It is recommended that requests be made in writing, since in many cases it will take several days to ascertain whether a record exists.

(b) Requests for notification of the existence of a record should specifically identify the system of records involved and should state, if the requestor is other than the individual to whom the record pertains, the relationship of the requestor to that individual. (Note that requests will not be honored by the Foundation pursuant to the Privacy Act unless made (1) by the individual to whom the record pertains, (2) by such individual's parent if the individual is a minor, or (3) by such individual's legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction).



(c) The Foundation will attempt to respond to a request as to whether a record exists within 10 working days from the time it receives the request or from the time any required identification is established, whichever is later.

**§ 1115.4 Procedures for requests for access to or disclosure of records pertaining to an individual.**

(a) Any person may request review of records pertaining to him by appearing at the National Endowment for the Arts, Room 1338, 2401 E Street, NW., Washington, D.C. 20506, or the National Endowment for the Humanities, Room 1000, 806 15th Street, NW., Washington, D.C. 20506 on work days between the hours of 9:00 a.m. and 5:30 p.m. or by writing to the Office of the General Counsel, National Endowment for the Arts, or National Endowment for the Humanities, Washington, D.C. 20506. (See paragraphs (b) and (c) of this section for identification requirements.) The request should specifically identify the systems or records involved. The Foundation will strive either to make the record available within 15 working days of the request or to inform the requestor of the need for additional identification or the tendering of fees (as specified in paragraph (d) of this section) within 15 working days.

(b) In the case of persons making requests by appearing at the Foundation, the amount of personal identification required will of necessity vary with the sensitivity of the record involved. Except as indicated below, reasonable identification such as employment identification cards, drivers licenses, and credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary. Records in the following systems of records, however, are considered to contain relatively sensitive and/or detailed personal information—

GRANT APPLICATIONS—NEA.  
GRANT APPLICATIONS—NEH.  
GRANTS TO INDIVIDUALS—NEA.  
GRANTS TO INDIVIDUALS AND INSTITUTIONS—NEH.  
EQUAL EMPLOYMENT OPPORTUNITY CASE FILE—NFAH NEA/NEH.

**EMPLOYEE PAYROLL—NFAH.  
PERSONNEL RECORDS—NFAH.**

Accordingly, with respect to requests for records in these systems the Foundation reserves the rights to require sufficient identification to identify positively the individual making the request. This might involve independent verification by the Foundation as by phone calls to determine whether an individual has made a request, personal identification by Foundation employees who know the individual, or such other means as are considered appropriate under the circumstances.

(c) A written request will be honored only if it contains the following certification before a duly commissioned notary public of any state or territory (or similar official if the request is made outside the United States):

I, \_\_\_\_\_ (Printed name), do hereby certify that I am the individual about whom the record requested in this letter pertains or that I am within the class of persons authorized to act on his behalf in accordance with 5 U.S.C. 552a(h).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

In the County of \_\_\_\_\_ State  
of \_\_\_\_\_, On this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Name of individual)  
who is personally known to me, did appear before me and sign the above certificate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(s) My Commission expires \_\_\_\_\_

However, where the record requested is contained in any of the systems of records listed in paragraph (b) of this section, the Foundation reserves the right to require additional identification and/or to independently verify to its satisfaction, the identity of the requestor.

(d) Charges for copies of records will be at the rate of \$0.10 per photography of each page. Where records are not susceptible to photo-copying, e.g., punch cards, magnetic tapes or over-

size materials, the amount charged will be actual cost as determined on a case-by-case basis. Only one copy of each record requested will be supplied. No charge will be made unless the charge as computed above would exceed \$3.00 for each request or related series of requests. If a fee in excess of \$25.00 would be required, the requestor shall be notified and the fee must be tendered before the records will be copied.

#### 1115.5 Correction of records.

(a) Any individual is entitled to request amendments of records pertaining to him pursuant to 5 U.S.C. 552a(d)(2). Such a request shall be made in writing and addressed to the Office of the General Counsel, National Endowment for the Arts or National Endowment for the Humanities, Washington, D.C. 20506.

(b) The request should specify the record and systems of records involved, and should specify the exact correction desired and state that the request is made pursuant to the Privacy Act. An edited copy of the record showing the desired correction is desirable. Within 10 working days of the receipt of a properly addressed request (or within 10 working days of the time the General Counsel, National Endowment for the Arts or the General Counsel, National Endowment for the Humanities becomes aware that a particular communication not addressed as prescribed above is a request for correction of a record under the Privacy Act), the General Counsel's office shall acknowledge receipt of the request.

(c) The General Counsel's office upon receipt of such a request shall promptly confer with the office within the Foundation responsible for the record. In the event it is felt that correction is not warranted in whole or in part, the matter shall be brought to the attention of the Deputy Chairman of the Endowment involved. If, after review by the Deputy Chairman of the involved Endowment and discussion with the requestor or, if deemed helpful, it is determined that correction as requested is not warranted, a letter shall be sent by the Deputy Chairman's office to the requestor denying his re-

quest and/or explaining what correction might be made if agreeable to the requestor. This letter shall set forth the reasons for the refusal to honor the request for correction. It shall also inform him of his right to appeal this decision and include a description of the appeals procedure set forth in paragraph (d) of this section.

(d) An appeal may be taken from an adverse determination under paragraph (c) of this section to the Assistant Chairman/Management, National Endowment for the Arts or the Chairman, National Endowment for the Humanities. Such appeal must be made in writing and should clearly indicate that it is an appeal. The basis for the appeal should be included, and it should be mailed to the same address as listed in paragraph (a) of this section. A hearing at the Foundation may be requested. Such hearing will be informal, and shall be before the Assistant Chairman/Management, National Endowment for the Arts, the Chairman, National Endowment for the Humanities, or an appointed designee. If no hearing is requested, the request for appeal should include the basis for the appeal. Where no hearing is requested the Assistant Chairman or Chairman before whom the appeal is taken shall render his decision within thirty working days after receipt of the written appeal at the Foundation, unless the Assistant Chairman or Chairman before whom the appeal is taken, for good cause shown, extends the 30-day period and the appellant is advised in writing of such extension. If a hearing is requested, the Foundation will attempt to contact the appellant within five working days and arrange a suitable time for the hearing. In such cases the decision of the Assistant Chairman or Chairman shall be made within 30 working days after the hearing unless the time is extended and the appellant is advised in writing of such extension.

(e) The final decision of the Assistant Chairman or Chairman in an appeal shall be in writing, and, if adverse to the appellant, set forth the reasons for the refusal to amend the record and advise him of his right to appeal the decision under 5 U.S.C. 552a(g)(1)(A). The individual shall

also be notified that he has the right to file with the Foundation a concise statement setting forth the reasons for this disagreement with the refusal of the Foundation to amend his record.

**§ 1115.6 Disclosure of records to agencies or persons other than the individual to whom the record pertains.**

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records required to be made available by the Freedom of Information Act will be released in response to a request formulated in accordance with Foundation regulations found at 45 CFR Part 1100.

(b) Records not required by the Freedom of Information Act to be released may be released, at the discre-

tion of the Foundation, if the written consent of the individual to whom they pertain has been obtained or if such release would be authorized under 5 U.S.C. 552a(b)(1) or (3)-(11).

**§ 1115.7 Exemptions.**

(a) *Fellowships and grants.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of section 552a(d) any materials which would disclose the identity of references for fellowship or grant applicants contained in any of the Foundation's systems of records.

(b) *Applicants for employment.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of applicants for employment at the Foundation contained in the system of records entitled "Official Personnel Folders".



## SUBCHAPTER B—NATIONAL ENDOWMENT FOR THE ARTS

### PART 1150—COLLECTION OF CLAIMS UNDER THE FEDERAL CLAIMS COLLECTION ACT OF 1966

#### Sec.

- 1150.1 Scope.
- 1150.2 Incorporation of joint standards by reference.
- 1150.3 Subdivision and joining of claims.
- 1150.4 Referral of claims to the General Counsel.
- 1150.5 Accounting control.
- 1150.6 Record retention.
- 1150.7 Suspension or revocation of eligibility.
- 1150.8 Standards for collection of claims.
- 1150.9 Standards for compromise of claims.
- 1150.10 Standards for suspension or termination of collection action.
- 1150.11 Referral to GAO or Justice Department.

**AUTHORITY:** Federal Claims Collection Act of 1966.

**SOURCE:** 40 FR 51196, Nov. 4, 1975, unless otherwise noted.

#### § 1150.1 Scope.

This subpart sets forth the regulations of the National Endowment for the Arts implementing the Federal Claims Collection Act of 1966 (the Act) in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR Parts 101 through 105. The Act (a) requires the head of an agency or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the National Endowment for the Arts; and (b) authorizes the head of an agency or his designee to compromise such claims that do not exceed \$20,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on such claims has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting such claim is likely to exceed the amount of recovery.

#### § 1150.2 Incorporation of joint standards by reference.

All administrative actions to collect claims arising out of the activities of

the National Endowment for the Arts shall be performed in accordance with the applicable standards prescribed in 4 CFR Parts 101 through 105, which are incorporated by reference and supplemented in this subpart.

#### § 1150.3 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding \$20,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than \$20,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed \$20,000 exclusive of interest.

#### § 1150.4 Referral of claims to the General Counsel.

(a) *Authority of the General Counsel.* The General Counsel shall exercise the powers and perform the duties of the head of the agency to compromise or to suspend or terminate collection action on all claims not exceeding \$20,000 exclusive of interest. Claims shall be referred to the General Counsel well within the applicable statute of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

(b) *Exclusions.* There shall be no compromise or terminated collection action with respect to any claim: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the anti-trust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such claims

shall be promptly referred to the Justice Department or GAO, as appropriate.

#### § 1150.5 Accounting control.

The General Counsel shall process all claims collections through the appropriate accounting office and report the collection, compromise, suspension and termination of all claims to the appropriate accounting office for recording.

#### § 1150.6 Record retention.

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate office or the General Counsel not less than 1 year after the applicable statute of limitations has run.

#### § 1150.7 Suspension or revocation of eligibility.

(a) In the event a contractor, grantee, or other participant in programs sponsored by the Endowment fails to pay his debts to the Endowment within a reasonable time after demand, the fact shall be reported by the Grants, Audit, or other appropriate office to the General Counsel, who shall place such defaulting participant's name on the Endowment's list of debarred, suspended and ineligible contractors and grantees and the participant will be so advised.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the General Counsel who shall so advise the Treasury Department. The Treasury Department will notify the Endowment when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

#### § 1150.8 Standards for collection of claims.

(a) *Demand for payment.* Appropriate written demands shall be made upon the debtor which shall include information relating to the consequences of his failure to cooperate.

(b) *Collection by offset.* Collection by offset will be administratively undertaken on claims which are liquidated or certain in amount in every instance where this is feasible.

(c) *Liquidation of collateral.* When the Endowment holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

(d) *Collection in installments.* Claims with accrued interest should be collected in full or one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments.

(e) *Interest.* In the event prejudgment interest is not mandated by statute, contract or regulation, the interest shall be assessed at 7 percent. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest.

(f) *Omission not a defense.* Failure to comply with any standard prescribed in 4 CFR Chapter II or in this subpart shall not be available as a defense to any debtor.

#### § 1150.9 Standards for compromise of claims.

(a) *Compromise offer.* An offer to compromise may be accepted (1) if there is real doubt concerning the National Endowment for the Arts' ability to prove its case in court for the full

amount claimed; (2) if the cost of collecting the claim does not justify the enforced collection of the full amount; (3) if in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the National Endowment for the Arts' enforcement policy will be adequately served by acceptance of the sum to be agreed upon, or (4) for other reasons deemed valid by the General Counsel (or his designee) and made a part of the claim record.

(b) *Documentary evidence of compromise.* No compromise of a claim shall be final or binding on the Endowment unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

#### § 1150.10 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* Collection action shall be suspended temporarily on a claim when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is presently unable to make payment on the National Endowment for the Arts' claim or effect a compromise, but his future prospects justify retention of the claim for periodic review and action and (1) the applicable statute of limitations has been tolled or started anew or (2) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

(b) *Termination of collection action.* Collection action may be terminated and the Endowment file closed for the following reasons: (1) No substantial amount can be collected; (2) the debtor cannot be located; (3) the cost will exceed recovery; (4) the claim is legally without merit; or (5) the claim cannot be substantiated by evidence.

#### § 1150.11 Referral to GAO or Justice Department.

(a) *Claims referred.* Claims which cannot be collected, compromised, or terminated in accordance with 4 CFR Parts 101 to 105 will be referred to the General Accounting Office in accordance with 31 U.S.C. 71 or to the Department of Justice if the Endowment has been granted an exception from referrals to the General Accounting Office. Also, if there is doubt as to whether collection action should be suspended or terminated on a claim, the claim may be referred to the General Accounting Office for advice. When recovery of a judgment is prerequisite to imposition of administrative sanctions, the claim may be referred to the Justice Department for litigation even though termination of collection activity might otherwise be considered.

(b) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action and in any event, well within the statute of limitations for bringing suit against the debtor.

### PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

#### Subpart A—General Provisions

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##### GENERAL

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**AUTHORITY:** Executive Order 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93-112) (29 U.S.C. 794), Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95-602).

**SOURCE:** 44 FR 22734, Apr. 17, 1979, unless otherwise noted.

**Subpart A—General Provisions****§ 1151.1 Purpose.**

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.

**§ 1151.2 Application.**

This part applies to each recipient of financial assistance from the National Endowment for the Arts and to each program or activity that receives or benefits from such assistance.

**§ 1151.3 Definitions.**

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, (Pub. L. 93-516, 29 U.S.C. 706 *et seq.*) and the Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95-602).

(b) "Section 504" means section 504 of the Act.

(c) "Endowment" means the National Endowment for the Arts.

(d) "Chairman" means the Chairman, National Endowment for the Arts.

(e) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Endowment provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of federal personnel; or
- (3) Real and personal property or any interest in or use of such property, including:

(i) Transfers of leases of such property for less than fair market value or for reduced consideration; and,

(ii) proceeds from a subsequent transfer or lease of such property if the federal share of its fair market value is not returned to the Federal Government.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

**§ 1151.4 Notice.**

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or employment in, its programs and activities. Methods of initial and continuing

notification may include the posting of notices, publication in print, audio, and visual media, placement of notices in a recipient's publication, and distribution of other written and verbal communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

**§ 1151.5 Inconsistent State laws and effect of employment opportunities.**

(a) Recipients are not excused from complying with this part as a result of state or local laws which limit the eligibility of handicapped persons to receive services or to practice a profession or occupation.

(b) The presence of limited employment opportunities in a particular profession does not excuse a recipient from complying with the regulation. For example, a music school receiving Endowment financial assistance could not deny admission to a qualified blind applicant because a blind singer may experience more difficulty than a non-handicapped singer in finding a job.

§§ 1151.6-1151.10 [Reserved]

**Subpart B—Standards for Determining Who Are Handicapped Persons**

**§ 1151.11 Handicapped person.**

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of section 504, in connection with employment, this term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in ques-

tion or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional and mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

## § 1151.12 Qualified handicapped person.

"Qualified handicapped person" means:

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

## §§ 1151.13–1151.15 [Reserved]

**Subpart C—Discrimination Prohibited****GENERAL**

## § 1151.16 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

(b) These regulations do not prohibit the exclusion of nonhandicapped persons or persons with a specific type of handicap from the benefits of a program limited by federal statute or executive order to handicapped persons or persons with a different type of handicap.

(c) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Endowment financial assistance because of the absence of appropriate auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(e) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

## § 1151.17 Specific discriminatory actions prohibited.

(a) A recipient, in providing any aid, benefit, service, or program either directly or through contractual, licensing, or other arrangements, shall not, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, program, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(c) A recipient may not, directly or through contractual or other arrange-



ments, utilize criteria or methods of administration:

(1) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(d) A recipient may not, in determining the site or location of a facility, make selections:

(1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance; or

(2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(e) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with federal financial assistance.

§ 1151.18 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Arts.

(1) A museum exhibition catalogue or small press editions supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications;

(2) A theatre performance supported by federal funds may be made available to deaf and hearing impaired persons through the use of a sign lan-

guage interpreter or by providing scripts in advance of the performance.

(3) A performing arts organization receiving federal funds for a specific program offered in an inaccessible facility may arrange to provide a reasonable opportunity for that program to be offered to the public at large in an alternative accessible space; e.g., a theatre offering four different plays a season may offer at least one performance of each play in an alternative accessible space.

(4) Recipients of federal funds should make every effort to assure that they do not support organizations or individuals that discriminate;

(5) A handicapped person with experience and expertise equal to qualification standards established by a planning or advisory board may not be excluded from participation on the board on the basis of handicap. This does not mean that every planning or advisory board necessarily must include a handicapped person.

(b) Despite the existence of permissible separate or different programs, e.g., periodic performances in alternative accessible spaces, a physically handicapped person who wishes to be, and can be, escorted to a seat, may not be denied such access to an otherwise inaccessible theatre.

(c) State arts agencies are obligated to develop methods of administering federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed.

(d) In the event Endowment funds are utilized to construct, expand, alter, lease or rent a facility, the benefits of the programs and activities provided in or through that facility must be conducted in accordance with these regulations, e.g., a museum receiving a grant to renovate an existing facility must assure that all museum programs and activities conducted in that facility are accessible to handicapped persons.

(e) In carrying out the mandate of section 504 and these implementing regulations recipients should make every effort to administer Endowment assisted programs and activities in a

setting in which able-bodied and disabled persons are integrated, e.g., tours made available to the hearing impaired should be open to the public at large and everyone should be permitted to enjoy the benefits of a tactile experience in a museum.

§§ 1151.19–1151.20 [Reserved]

PROGRAM ACCESSIBILITY

§ 1151.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1151.22 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient may comply with the requirement of paragraph (a) of this section through alteration of existing facilities, the construction of new facilities, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes are necessary to make programs or activities in existing facilities accessible

such changes shall be made as soon as possible but in no event later than three years after the effective date of this part.

(d) Transition plan. In the event structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Upon request, the recipient shall make available for public inspection a copy of the transition plan. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

§ 1151.23 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A 117.1–1961 [R 1971]) (Copies obtainable at \$2.75 each from American National Standards In-

stitute, Inc., 1430 Broadway, New York, New York 10018, single copies available free from Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201, or the National Easter Seal Society, 2023 West Ogden Avenue, Chicago, Illinois 60612) shall constitute compliance with paragraph (a) of this section. Departures from the ANSI standards by the use of comparable standards shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

§§ 1151.24 [Reserved—Historic Properties]

§§ 1151.25–1151.30 [Reserved]

#### EMPLOYMENT

§ 1151.31 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipients, and with organizations providing training and apprenticeship programs.

(d) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absences, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 1151.32 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition, or modification of equipment or devices, such as use of telecommunication devices and amplifiers on telephones, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a



recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

#### § 1151.33 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

#### § 1151.34 Preemployment inquiries.

A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(a) When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for em-

ployment to indicate whether and to what extent they are handicapped, provided, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (c) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(b) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(c) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

[44 FR 22734, Apr. 17, 1979; 45 FR 57129, Aug. 27, 1980]

§§ 1151.35–1151.40 [Reserved]

**Subpart D—Enforcement**

**§ 1151.41 Assurances required.**

(a) An applicant for federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Chairman, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Endowment.

(b) Duration of obligation.

(1) In the case of federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(2) In all other cases the assurance will obligate the recipient for the period during which federal financial assistance is extended.

(c) Covenants.

Where property is purchased or improved with federal financial assistance, the recipient shall agree to include in any instrument effecting or recording any transfer of the property a covenant running with the property assuring nondiscrimination for the period during which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

**§ 1151.42 Self evaluation.**

(a) A recipient shall within six months of the effective date of this part:

(1) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(2) Modify, after consultation with interested persons, including handi-

capped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(3) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(4) Maintain on file, make available for public inspection, and provide to the Endowment upon request, for at least three years following completion of the self-evaluation:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and,

(iii) A description of any modifications made and of any remedial steps taken.

(5) The completed self-evaluation should be signed by a responsible official designated to coordinate the recipient's efforts in connection with this section.

**§ 1151.43 Adoption of grievance procedures.**

A recipient may adopt an internal grievance procedure in order to provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. A responsible official should be designated to coordinate the recipient's efforts in connection with this section. Such procedures need not be established with respect to complaints from applicants for employment.

**§ 1151.44 Endowment enforcement and compliance procedures.**

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in section 1110.8–1110.11 of Part 1110 of this Title.

§§ 1151.45–1151.50 [Reserved]

## SUBCHAPTER C—FEDERAL COUNCIL ON THE ARTS AND THE HUMANITIES

### PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

Sec.

- 1160.1 Purpose and scope.
- 1160.2 Federal Council on the Arts and the Humanities.
- 1160.3 Definitions.
- 1160.4 Application for indemnification.
- 1160.5 Certificate of national interest.
- 1160.6 Indemnity agreement.
- 1160.7 Letter of intent.
- 1160.8 Loss adjustment.
- 1160.9 Certification of claim and amount of loss to the Congress.
- 1160.10 Arbitration and appraisal.
- 1160.11 Indemnification limits.

**AUTHORITY:** Sec. 2(a)(2) of the Arts and Artifacts Indemnity Act (Pub. L. 94-198).

**SOURCE:** 41 FR 29385, July 16, 1976, unless otherwise noted.

#### § 1160.1 Purpose and scope.

This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and the Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94-158) as required by Section 2(a)(2) of the Act. An indemnity agreement made under these regulations shall cover either: (1) eligible items from the United States while on exhibition elsewhere when they are part of an exchange of exhibitions, or (2) eligible items from abroad while on exhibition in the United States, whether or not they are part of an exchange of exhibitions, but in no case shall both parts of such an exchange of exhibitions be covered. Internal guidance for staff of the Federal Council on the Arts and the Humanities and clarifications of the Act and of these regulations are contained or will be contained in circulars of the National Foundation on the Arts and the Humanities.

#### § 1160.2 Federal Council on the Arts and the Humanities.

In accordance with the directive contained in the President's statement upon approving the legislation on De-

cember 20, 1975, the Federal Council on the Arts and the Humanities, for the purposes of this part (45 CFR 1160), shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the United States Commissioner of Education, the Director of the National Science Foundation, the Librarian of Congress, the Chairman of the Commission of Fine Arts, the Archivist of the United States, the Commissioner, Public Buildings Service, General Services Administration, a member designated by the Secretary of State, and a member designated by the Secretary of the Interior.

#### § 1160.3 Definitions.

For the purposes of this part:

(a) "Council" means the Federal Council on the Arts and the Humanities as defined in § 1160.2.

(b) "Endowment" means either the National Endowment for the Arts or the National Endowment for the Humanities.

(c) "Foundation" means the National Foundation on the Arts and the Humanities.

(d) "Letter of Intent" means an agreement by the Council to provide an indemnity covering a future exhibition subject to compliance with all requirements at the date the indemnity is to be effective.

(e) "Lender" means the owner and any person or organization authorized by him to act with respect to the object and exhibition involved.

(f) "Eligible item" means an object which qualifies for coverage under the Arts and Artifacts Indemnity Act.

(g) "Exhibition" means a public display of an indemnified item(s) at one or more locations, as approved by the Council, presented by any person, non-profit agency, institution, or Government, in the United States or elsewhere.



(h) "On Exhibition" means the period of time beginning on the date an indemnified item leaves the place designated by the lender and ending on the termination date.

(i) "Indemnity Agreement" means the contract between the Council and the indemnitee covering loss or damage to indemnified items under the authority of the Arts and Artifacts Indemnity Act.

(j) "Indemnitee" means the party or parties to an indemnity agreement issued by the Council, to whom the promise of indemnification is made.

(k) "Termination date" means the date 30 days after the date specified in the application by which an indemnified item is to be returned to the place designated by the lender or the date on which the item is actually so returned, whichever date is earlier. (In museum terms this means wall-to-wall coverage.) After 11:59 p.m. on the termination date, the item is no longer covered by the indemnity agreement unless an extension has theretofore been requested by the indemnitee and granted by the Council.

#### § 1160.4 Application for indemnification.

An applicant for an indemnity shall submit an Application for Indemnification, addressed to the Federal Council on the Arts and the Humanities, National Foundation on the Arts and the Humanities, Washington, D.C. 20506, which shall describe as fully as possible at the time the application is submitted:

(a) The time, place, nature, and Project Director/Curator of the exhibition for which the indemnity is sought, which factors should be clearly and specifically delineated;

(b) Evidence that the owner and present possessor are willing to lend the eligible items, and both are prepared to be bound by the terms of the indemnity agreement;

(c) The total estimated value of all items to be indemnified, including a description of each item to be covered by the agreement and each item's estimated value;

(d) The source of valuations of each item, plus an overall appraisal by the indemnity applicant of the valuations established by others;

(e) The significance, and the educational, cultural, historical, or scientific value of the items as proposed to be exhibited and to be the subject of indemnification;

(f) Statements describing policies, procedures, techniques, and methods to be employed with respect to:

(1) Packing of items at the premises of, or the place designated by, the lender;

(2) Shipping arrangements;

(3) Condition reports at lender's location;

(4) Condition reports at borrower's location;

(5) Condition reports upon return of items to lender's location;

(6) Security during the exhibition and security during transportation, including escorts where applicable;

(7) Maximum values to be transported in a single instrumentality of transport;

(g) Insurance arrangements, if any, which are proposed to cover the first \$15,000 deductible of loss or the excess over the amount indemnified;

(h) Any loss incurred by the indemnitee or other groups involved in the exhibition in question during the three years prior to the Application for Indemnification which involved a borrowed or loaned item(s) or item(s) in their permanent collections where the amount of loss exceeded \$15,000. Details should include the date of loss, nature and cause of damage, and appraised value of the damaged item(s) both before and after loss;

(i) If the application is for an exhibition which will take place outside the United States, the applicant should set forth in detail the nature of the exchange of exhibitions of which it is a part, including all circumstances surrounding the exhibition being shown in the United States, with particular emphasis on facts concerning insurance or indemnity arrangements.

(j) Upon proper submission of the above required information an application will be selected or rejected for indemnification by the Council on the basis of (1) review of educational, cultural, historical or scientific value as required under the provisions of the Arts and Artifacts Indemnity Act; (2) certification by the Secretary of State

or his designee that the exhibition is in the national interest; and (3) review of the availability of indemnity obligation authority under section 5(b) of the Arts and Artifacts Indemnity Act.

#### § 1160.5 Certificate of national interest.

After preliminary review the application will be submitted to the Secretary of State or his designee for determination of national interest and issuance of a Certificate of National Interest in appropriate cases.

#### § 1160.6 Indemnity agreement.

In cases where the requirements of §§ 1160.4 and 1160.5 have been met to the satisfaction of the Council, an Indemnity Agreement pledging the full faith and credit of the United States for the agreed value of the exhibition in question may be issued to the indemnitee by the Council, subject to the provisions of § 1160.7.

#### § 1160.7 Letter of intent.

In cases where an exhibition proposed for indemnification is planned to commence on a date later than twelve (12) months subsequent to the submission of the application, the Council, upon approval of such a preliminary application, will provide a Letter of Intent stating that it will, subject to the conditions set forth therein, issue an Indemnity Agreement not later than ninety (90) days prior to commencement of the exhibition. In such cases, the Council will re-examine a final application during the twelve (12) month period prior to the date the exhibition is to commence, and shall, upon being satisfied that such conditions have been fulfilled, issue an Indemnity Agreement within the above specified time period.

#### § 1160.8 Loss adjustment.

(a) In the event of loss or damage covered by an Indemnity Agreement, the indemnitee without delay shall file a Notice of Loss or Damage with the Council and shall exercise reasonable care in order to minimize the amount of loss. Within a reasonable time after a loss has been sustained, the claimant shall file a Proof of Loss or Damage on forms provided by the Council. Failure to report such loss or damage and to

file such Proof of Loss within sixty (60) days after the termination date as defined in § 1160.3(k), shall invalidate any claim under the Indemnity Agreement.

(b) In the event of total loss or destruction of an indemnified item, indemnification will be made on the basis of the amount specified in the Indemnity Agreement.

(c) In the event of partial loss, or damage, and reduction in the fair market value, as a result thereof, to an indemnified item, indemnification will be made on the basis provided for in the Indemnity Agreement.

(d) No loss or damage claim will be paid in excess of the Indemnification Limits specified in § 1160.11.

#### § 1160.9 Certification of claim and amount of loss to the Congress.

Upon receipt of a claim of total loss or a claim in which the Council is in agreement with respect to the amount of partial loss, or damage and reduction in fair market value as a result thereof, the Council shall certify the validity of the claim and the amount of such loss, or damage and reduction in fair market value as a result thereof, to the Speaker of the House of Representatives and the President pro tempore of the Senate.

#### § 1160.10 Arbitration and appraisal.

(a)(1) In the event the Council and the indemnitee fail to agree on the amount of partial loss, or damage to, or any reduction in the fair market value as a result thereof, to the indemnified item(s), each shall select a competent appraiser(s) with evidence to be provided to show that the indemnitee's selection is satisfactory to the owner. The appraiser(s) selected by the Council and the indemnitee shall then select a competent and disinterested umpire.

(2) In the event the appraisers, within fifteen (15) days of their appointment, do not agree upon the selection of an umpire, either party may request that an umpire be selected by a federal district judge in the District of Columbia.

(b) After selection of an umpire, the appraisers shall assess the partial loss,

## **§ 1160.11**

or damage to, or where appropriate, any reduction in the fair market value of, the indemnified item(s). The appraisers' agreement with respect to these issues shall determine the dollar value of such loss or damage or repair costs, and where appropriate, such reduction in the fair market value. Disputes between the appraisers with respect to partial loss, damage repair costs, and fair market value reduction of any item shall be submitted to the umpire for determination. The appraisers' agreement or the umpire's determination shall be final and binding on the parties, and agreement on amount or such determination on amount shall be certified to the Speaker of the House and the President pro tempore of the Senate by the Council.

(c) Each appraiser shall be paid by the party selecting him or her. The

## **Title 45—Public Welfare**

umpire and all other expenses of the appraisal shall be paid by the parties in equal shares.

### **§ 1160.11 Indemnification limits.**

(a) The maximum loss or damage covered by a single exhibition or an Indemnity Agreement shall be \$50,000,000.

(b) A deductible amount of \$15,000 is applicable to loss or damage arising out of a single exhibition for which an indemnity is issued.

(c) The aggregate amount of loss or damage covered by indemnity agreements at any one time shall not exceed \$250,000,000.

(d) The maximum value of eligible items carried in or upon any single instrumentality of transportation at any one time, unless expressly permitted by the Council shall not exceed \$7,500,000.



**SUBCHAPTER D—NATIONAL ENDOWMENT FOR THE HUMANITIES****PART 1176—PART-TIME  
EMPLOYMENT****Sec.**

- 1176.1 General.
- 1176.2 Definitions.
- 1176.3 Criteria.
- 1176.4 Establishing and converting part-time positions.
- 1176.5 Annual plan.
- 1176.6 Review and evaluation.
- 1176.7 Publicizing vacancies.
- 1176.8 Exceptions.
- 1176.9–1176.99 [Reserved]

**AUTHORITY:** Federal Employees Part-Time Career Employment Act of 1978, Pub. L. 95-437, 92 Stat. 1055, 5 U.S.C. 3401-3408.

**SOURCE:** 46 FR 35647, July 10, 1981, unless otherwise noted.

**§ 1176.1 General.**

(a) **Purpose.** Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who require a reduced workweek, providing parents with opportunities to balance family responsibilities with the need for added income, and assisting students who must finance their own education or vocational training. In view of this, the National Endowment for the Humanities will operate a part-time career employment program, consistent with its responsibilities and in accordance with Public Law 95-437, the Federal Employees' Part-Time Career Employment Act of 1978.

(b) **Program Coordinator.** The Personnel Officer is responsible for program operation and coordination.

**§ 1176.2 Definitions.**

(a) "Part-time employment" means employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to

the Act or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(b) "Career employment" includes competitive and excepted service employees in tenure groups I and II.

**§ 1176.3 Criteria.**

Positions becoming vacant, unless excepted as provided by Section 1176.8, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

- (a) Mission requirements.
- (b) Workload.
- (c) Employment ceilings and budgetary considerations.
- (d) Availability of qualified applicants willing to work part-time.

**§ 1176.4 Establishing and converting part-time positions.**

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in Section 1176.3 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

**§ 1176.5 Annual plan.**

(a) An agencywide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, and will be transmitted to the Office of Personnel Management with the required report to OPM on the status of the program as of September 30 of each year.

(b) Beginning in FY 1981 in administering personnel ceilings, part-time career employees shall be counted

against ceiling authorizations as a fraction. This will be determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

**§ 1176.6 Review and evaluation.**

Regular employment reports will be used to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

**§ 1176.7 Publicizing vacancies.**

When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:

- (a) Federal Job Information Centers.
- (b) State Employment Offices.
- (c) Veterans' Administration Recruiting Bulletins.

**§ 1176.8 Exceptions.**

- (a) The Personnel Officer may except positions from inclusion in this

program to provide fewer than 16 hours per week. This will normally be done in furtherance of special hiring programs such as the Stay-in-School or Handicapped Employment Program.

(b) On occasions when it becomes necessary to allow supervisors and managers to temporarily increase the hours of duty of employees above 32 hours per week for limited and specific periods of time to meet heavy workloads, perform special assignments, permit employee training, etc., the Endowment policy is as follows:

(1) Requests to work NEH employees on a 32 hour/week appointment more than 32 hours must be submitted in advance to the Personnel Office;

(2) Justification should be concise but specific and must state the exact time frame for the increase in hours above 32 hours per week; and

(3) The Program Coordinator will decide if the request meets the intent of the law and this agency's policy.

**§§ 1176.9–1176.99 [Reserved]**

## FINDING AIDS

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At 42 FR 59212, November 15, 1977, regulations formerly appearing in 45 CFR Chapter IX, Administration on Aging were transferred to 45 CFR Chapter XIII, Office of Human Development.

The regulations added to Chapter XIII are redesignated as regulations in Subchapter C—Administration on Aging, Older Americans Programs of Chapter XIII.

For the convenience of the user the following table shows the relationship of the former Part numbers contained in Chapter IX to their new Part numbers reflected in Chapter XIII.

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